

HOUSE AMENDMENTS TO HOUSE BILL 3681

By COMMITTEE ON CLIMATE, ENERGY, AND ENVIRONMENT

April 16

1 On page 1 of the printed bill, line 2, delete “215.213, 215.283,”.

2 On page 2, line 15, after “shall” insert “make every effort to”.

3 On page 3, line 23, after the period insert “The earliest date that the council may require con-
4 struction of a facility to begin is six years from the date the council issues the site certificate.”.

5 Delete lines 37 through 45 and delete pages 4 and 5.

6 On page 6, delete lines 1 through 17 and insert:

7 “**SECTION 2.** ORS 469.403 is amended to read:

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

24 “(2) Any party **or limited party** to a contested case proceeding on a site certificate or amended
25 site certificate application may appeal **a final order issued by the council under ORS 469.300 to**
26 **469.563, 469.590 to 469.619, 469.930 and 469.992, including** the council’s approval or rejection of the
27 site certificate or amended site certificate application. Issues on appeal shall be limited to those
28 raised by the parties **or limited parties** to the contested case proceeding before the council. **To**
29 **appeal a final order, a petitioner shall establish individual or associational standing by dem-**
30 **onstrating an injury to the petitioner or petitioner’s members resulting from the final order.**

31 “(3) **Notwithstanding ORS 183.482 and 183.484,** jurisdiction for judicial review of the council’s
32 approval or rejection of an application for a site certificate or amended site certificate, **including**
33 **decisions related to or arising from a contested case on an application for a site certificate**
34 **or amended site certificate,** is conferred upon the Supreme Court. Proceedings for review shall
35 be instituted by filing a petition in the Supreme Court. The petition shall be filed within 60 days

1 after the date of service of the council's final order **approving or rejecting a site certificate or**
2 **amended site certificate** or within 30 days after the date the petition for rehearing is denied or
3 deemed denied. Date of service shall be the date on which the council delivered or mailed its order
4 in accordance with ORS 183.470.

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

10 “(a) The petitioner will suffer irreparable injury; or

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

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

14 “(a) Shall require the petitioner requesting the stay to give an undertaking in the amount of
15 \$5,000.

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

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

18 “(6) Except as otherwise provided in ORS 469.320 and this section, the review by the Supreme
19 Court shall be the same as the review by the Court of Appeals described in ORS 183.482. The Su-
20 preme Court shall give priority on its docket to such a petition for review and shall render a deci-
21 sion within six months of the filing of the petition for review.

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

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

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

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

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

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

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

43 “**SECTION 3.** ORS 469.405 is amended to read:

44 “469.405. (1) A site certificate may be amended with the approval of the Energy Facility Siting
45 Council. The council may establish by rule the type of amendment that *[must]* **may** be considered

1 in a contested case proceeding. [*Judicial review of an amendment to a site certificate shall be as*
2 *provided in ORS 469.403.*] **Notwithstanding ORS 183.482 and 183.484, judicial review of the**
3 **council's approval or rejection of a request for an amendment to a site certificate or decision**
4 **related to or arising from a contested case on an amendment, regardless of whether a con-**
5 **tested case was held prior to the council's decision, is conferred solely on the Supreme**
6 **Court. If a contested case is not held, only the certificate holder or persons who submitted**
7 **comments on the request for an amendment in compliance with council rules may seek ju-**
8 **dicial review. A certificate holder or person who seeks judicial review is limited to the issues**
9 **the certificate holder or the person raised in their comments.**

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

18 “(3) An amendment to a site certificate is not required for a pipeline less than 16 inches in di-
19 ameter and less than five miles in length that is proposed to be constructed to test or maintain an
20 underground gas storage reservoir. If the proposed pipeline will connect to a council certified sur-
21 face facility related to an underground gas storage reservoir or to a council certified gas pipeline,
22 whether the proposed pipeline is to be located inside or outside the site of a council certified facil-
23 ity, the certificate holder must obtain, prior to construction, the approval of the department for the
24 construction, operation and retirement of the proposed pipeline. The department shall approve such
25 a proposed pipeline if the pipeline meets applicable council substantive standards. Notwithstanding
26 ORS 469.503 (3), the department may not review the proposed pipeline for compliance with other
27 state standards. Notwithstanding ORS 469.503 (4), or any council rule addressing compliance with
28 land use standards, the department shall not review such a proposed pipeline for compliance with
29 land use requirements. Notwithstanding ORS 469.401 (3), the approval by the department of such
30 pipeline shall not bind any state or local agency. The council may adopt appropriate procedural
31 rules for the department review. The department shall issue an order approving or rejecting the
32 proposed pipeline. Judicial review of a department order under this section shall be as provided in
33 ORS 469.403.

34 “(4) **Subject to applicable rules adopted by the council, a person who holds a site certifi-**
35 **cate may request to add area to the approved site boundary without the council requiring**
36 **an amendment to the site certificate.”.**

37 On page 8, delete lines 5 through 45 and delete pages 9 through 23.

38 On page 24, delete lines 1 through 34.

39 In line 38, delete “8” and insert “6”.