

HB 3681-1  
(LC 2730)  
3/3/25 (CPA/ps)

Requested by Representative GAMBA

**PROPOSED AMENDMENTS TO  
HOUSE BILL 3681**

On page 3 of the printed bill, delete lines 37 through 45 and delete pages 4 and 5.

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

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

**“469.403. (1) The Energy Facility Siting Council shall include in all of the council’s 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. Any party or limited party to a contested case proceeding may apply for rehearing within 30 days from the date the approval or rejection is served. The date of service shall be the date on which the [*Energy Facility Siting*] council delivered or mailed its approval or rejection in accordance with ORS 183.470. The application for rehearing shall set forth specifically the ground upon which the application is based. No objection to the council’s approval or rejection of an application for a site certificate or a site certificate amendment shall be considered on rehearing without good cause shown unless the basis for the objection is urged with reasonable specificity before the council in the site certificate or amended site certificate process. Upon such application, the council shall have the power to grant or deny rehearing or to abrogate or modify its order without further hearing. Unless the council acts upon the application for rehearing within 30 days after the application is filed, the**

1 application shall be considered denied. The filing of an application for re-  
2 hearing shall not, unless specifically ordered by the council, operate as a  
3 stay of the site certificate or amended site certificate for the facility.

4 “(2) Any party **or limited party** to a contested case proceeding on a site  
5 certificate or amended site certificate application may appeal the council’s  
6 approval or rejection of the site certificate or amended site certificate ap-  
7 plication. Issues on appeal shall be limited to those raised by the parties **or**  
8 **limited parties** to the contested case proceeding before the council.

9 “(3) **Notwithstanding ORS 183.482 and 183.484**, jurisdiction for judicial  
10 review of the council’s approval or rejection of an application for a site  
11 certificate or amended site certificate, **including decisions related to or**  
12 **arising from a contested case on an application for a site certificate**  
13 **or amended site certificate**, is conferred upon the Supreme Court. Pro-  
14 ceedings for review shall be instituted by filing a petition in the Supreme  
15 Court. The petition shall be filed within 60 days after the date of service of  
16 the council’s final order **approving or rejecting a site certificate or**  
17 **amended site certificate** or within 30 days after the date the petition for  
18 rehearing is denied or deemed denied. Date of service shall be the date on  
19 which the council delivered or mailed its order in accordance with ORS  
20 183.470.

21 “(4) The filing of a petition for judicial review may not stay the order  
22 **approving or rejecting a site certificate or amended site certificate**,  
23 except that a party **or limited party** to the contested case, **or any other**  
24 **person seeking judicial review of a decision related to or arising from**  
25 **a contested case**, may apply to the Supreme Court for a stay upon a  
26 showing that there is a colorable claim of error and that:

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

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

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

3       “(a) Shall require the petitioner requesting the stay to give an undertak-  
4 ing in the amount of \$5,000.

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

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

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

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

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

17       “(b) Any reasonable period of delay resulting from a continuance granted  
18 by the court on the court’s own motion or at the request of one of the par-  
19 ties, if the court granted the continuance on the basis of findings that the  
20 ends of justice served by granting the continuance outweigh the best inter-  
21 ests of the public and the other parties in having a decision within six  
22 months.

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

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

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

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

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

13 “469.405. (1) A site certificate may be amended with the approval of the  
14 Energy Facility Siting Council. The council may establish by rule the type  
15 of amendment that *[must]* **may** be considered in a contested case proceeding.  
16 *[Judicial review of an amendment to a site certificate shall be as provided in*  
17 *ORS 469.403.]* **Notwithstanding ORS 183.482 and 183.484, judicial review**  
18 **of a council’s approval or rejection of a request for an amendment to**  
19 **a site certificate or decision related to or arising from a contested case**  
20 **on an amendment, regardless of whether the contested case was held**  
21 **prior to the council’s decision, is conferred solely on the Supreme**  
22 **Court. If a contested case is not held, only the certificate holder or**  
23 **persons who submitted comments on a draft proposed order issued by**  
24 **the State Department of Energy may seek judicial review and the is-**  
25 **ssues that a person may raise on appeal are limited to those issues the**  
26 **person raised in comments on the draft proposed order.**

27 “(2) Notwithstanding ORS 34.020 or 197.825, or any other provision of law,  
28 the land use approval by an affected local government of a proposed amend-  
29 ment to a facility and the recommendation of the special advisory group of  
30 applicable substantive criteria shall be subject to judicial review only as

1 provided in ORS 469.403. If the applicant elects to show compliance with the  
2 statewide planning goals by demonstrating that the facility has received lo-  
3 cal land use approval, the provisions of this section shall apply only to pro-  
4 posed projects for which the land use approval by the local government  
5 occurs after the date an application for amendment is submitted to the State  
6 Department of Energy.

7 “(3) An amendment to a site certificate is not required for a pipeline less  
8 than 16 inches in diameter and less than five miles in length that is proposed  
9 to be constructed to test or maintain an underground gas storage reservoir.  
10 If the proposed pipeline will connect to a council certified surface facility  
11 related to an underground gas storage reservoir or to a council certified gas  
12 pipeline, whether the proposed pipeline is to be located inside or outside the  
13 site of a council certified facility, the certificate holder must obtain, prior  
14 to construction, the approval of the department for the construction, opera-  
15 tion and retirement of the proposed pipeline. The department shall approve  
16 such a proposed pipeline if the pipeline meets applicable council substantive  
17 standards. Notwithstanding ORS 469.503 (3), the department may not review  
18 the proposed pipeline for compliance with other state standards. Notwith-  
19 standing ORS 469.503 (4), or any council rule addressing compliance with  
20 land use standards, the department shall not review such a proposed pipeline  
21 for compliance with land use requirements. Notwithstanding ORS 469.401  
22 (3), the approval by the department of such pipeline shall not bind any state  
23 or local agency. The council may adopt appropriate procedural rules for the  
24 department review. The department shall issue an order approving or re-  
25 jecting the proposed pipeline. Judicial review of a department order under  
26 this section shall be as provided in ORS 469.403.

27 **“(4) Subject to applicable rules adopted by the council, a person who**  
28 **holds a site certificate may request to add area to the approved site**  
29 **boundaries in the site certificate without the council requiring an**  
30 **amendment to the site certificate.**

1       “(5)(a) A person who holds a site certificate may file a request to  
2 extend by up to three years the deadlines by which construction of an  
3 energy facility must begin or be completed as specified in the site  
4 certificate.

5       “(b) The council shall grant a request filed under this subsection if:

6       “(A) The request is the person’s first or second request to extend  
7 the deadlines;

8       “(B) The person who holds the site certificate is in substantial  
9 compliance with the site certificate, notwithstanding the deadlines by  
10 which construction must begin or be completed as specified in the site  
11 certificate; and

12       “(C) The site certificate is for an energy facility that is or is any  
13 combination of:

14       “(i) A battery energy storage system, as defined in ORS 469.300;

15       “(ii) A solar photovoltaic power generation facility under ORS  
16 469.300 (12)(a)(D); or

17       “(iii) An electric power generating plant under ORS 469.300  
18 (12)(a)(J).

19       “(c) The council shall grant a request that meets the requirements  
20 under paragraph (b) of this subsection without requiring the person  
21 to apply for an amendment to the site certificate and shall issue a final  
22 order amending the site certificate for the new deadlines.

23       “(d) Judicial review of an amendment to a site certificate under this  
24 subsection shall be as provided in ORS 469.403.”.