

HB 3681-4
(LC 2730)
4/1/25 (CPA/ps)

Requested by Representative GAMBA

**PROPOSED AMENDMENTS TO
HOUSE BILL 3681**

1 On page 2 of the printed bill, line 15, after “shall” insert “make every
2 effort to”.

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

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

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

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

9 “469.403. (1) **The Energy Facility Siting Council shall include in all**
10 **of the council’s final orders approving or rejecting an application for**
11 **a site certificate or amended site certificate any decisions related to**
12 **or arising from a contested case on the application.** Any party or **lim-**
13 **ited party** to a contested case proceeding may apply for rehearing within
14 30 days from the date the approval or rejection is served. The date of service
15 shall be the date on which the [*Energy Facility Siting*] council delivered or
16 mailed its approval or rejection in accordance with ORS 183.470. The appli-
17 cation for rehearing shall set forth specifically the ground upon which the
18 application is based. No objection to the council’s approval or rejection of
19 an application for a site certificate or a site certificate amendment shall be
20 considered on rehearing without good cause shown unless the basis for the
21 objection is urged with reasonable specificity before the council in the site

1 certificate or amended site certificate process. Upon such application, the
2 council shall have the power to grant or deny rehearing or to abrogate or
3 modify its order without further hearing. Unless the council acts upon the
4 application for rehearing within 30 days after the application is filed, the
5 application shall be considered denied. The filing of an application for re-
6 hearing shall not, unless specifically ordered by the council, operate as a
7 stay of the site certificate or amended site certificate for the facility.

8 “(2) Any party **or limited party** to a contested case proceeding on a site
9 certificate or amended site certificate application may appeal **a final order**
10 **issued by the council under ORS 469.300 to 469.563, 469.590 to 469.619,**
11 **469.930 and 469.992, including** the council’s approval or rejection of the site
12 certificate or amended site certificate application. Issues on appeal shall be
13 limited to those raised by the parties **or limited parties** to the contested
14 case proceeding before the council. **To appeal a final order, a petitioner**
15 **shall establish individual or associational standing by demonstrating**
16 **an injury to the petitioner or petitioner’s members resulting from the**
17 **final order.**

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

30 “(4) The filing of a petition for judicial review may not stay the order

1 **approving or rejecting a site certificate or amended site certificate,**
2 **except that a party or limited party to the contested case, or any other**
3 **person seeking judicial review of a decision related to or arising from**
4 **a contested case,** may apply to the Supreme Court for a stay upon a
5 showing that there is a colorable claim of error and that:

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

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

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

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

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

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

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

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

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

26 “(b) Any reasonable period of delay resulting from a continuance granted
27 by the court on the court’s own motion or at the request of one of the par-
28 ties, if the court granted the continuance on the basis of findings that the
29 ends of justice served by granting the continuance outweigh the best inter-
30 ests of the public and the other parties in having a decision within six

1 months.

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

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

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

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

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

22 “469.405. (1) A site certificate may be amended with the approval of the
23 Energy Facility Siting Council. The council may establish by rule the type
24 of amendment that *[must]* **may** be considered in a contested case proceeding.
25 *[Judicial review of an amendment to a site certificate shall be as provided in*
26 *ORS 469.403.]* **Notwithstanding ORS 183.482 and 183.484, judicial review**
27 **of the council’s approval or rejection of a request for an amendment**
28 **to a site certificate or decision related to or arising from a contested**
29 **case on an amendment, regardless of whether a contested case was**
30 **held prior to the council’s decision, is conferred solely on the Supreme**

1 **Court. If a contested case is not held, only the certificate holder or**
2 **persons who submitted comments on the request for an amendment**
3 **in compliance with council rules may seek judicial review. A certif-**
4 **icate holder or person who seeks judicial review is limited to the issues**
5 **the certificate holder or the person raised in their comments.**

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

16 “(3) An amendment to a site certificate is not required for a pipeline less
17 than 16 inches in diameter and less than five miles in length that is proposed
18 to be constructed to test or maintain an underground gas storage reservoir.
19 If the proposed pipeline will connect to a council certified surface facility
20 related to an underground gas storage reservoir or to a council certified gas
21 pipeline, whether the proposed pipeline is to be located inside or outside the
22 site of a council certified facility, the certificate holder must obtain, prior
23 to construction, the approval of the department for the construction, opera-
24 tion and retirement of the proposed pipeline. The department shall approve
25 such a proposed pipeline if the pipeline meets applicable council substantive
26 standards. Notwithstanding ORS 469.503 (3), the department may not review
27 the proposed pipeline for compliance with other state standards. Notwith-
28 standing ORS 469.503 (4), or any council rule addressing compliance with
29 land use standards, the department shall not review such a proposed pipeline
30 for compliance with land use requirements. Notwithstanding ORS 469.401

1 (3), the approval by the department of such pipeline shall not bind any state
2 or local agency. The council may adopt appropriate procedural rules for the
3 department review. The department shall issue an order approving or re-
4 jecting the proposed pipeline. Judicial review of a department order under
5 this section shall be as provided in ORS 469.403.

6 **“(4) Subject to applicable rules adopted by the council, a person who**
7 **holds a site certificate may request to add area to the approved site**
8 **boundary without the council requiring an amendment to the site**
9 **certificate.”.**

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