



May 7, 2025

Senate Committee on Energy and Environment

RE: HB 3681-A – Oppose as written

Chair Sollman, Vice Chair Brock Smith, and committee members,

Friends of the Columbia Gorge (“Friends”) is a nonprofit organization with approximately 4,000 members. Friends is dedicated to protecting and enhancing the scenic, cultural, recreational, and natural resources of the Columbia River Gorge National Scenic Area (“National Scenic Area” or “Gorge”). Friends has participated in contested cases at the Energy Facility Siting Council (“EFSC”) and appeals of those cases when the wildlife, cultural artifacts, and scenic resources of the Gorge have been threatened.

Friends opposes HB 3681-A. This bill proposes sweeping changes to the EFSC administrative and judicial review processes and standards that raise significant concerns regarding transparency, public engagement, and longstanding protections provided by Oregon’s energy siting laws. As currently drafted, HB 3681-A unfairly abbreviates important review processes and creates new presumptions of project compliance—all of which threatens to undermine critical environmental review and public input.

Friends has prioritized the ongoing climate crisis in our program work and supports the transition away from existing fossil fuel resources to renewable energy sources to address this, however, we want to make sure that existing procedures and land use protections aren’t being sacrificed to achieve this. As written, this bill presents multiple concerns that siting new renewable energy projects would be allowed to take precedence over other environmental and land protections.

Friends’ concerns with this bill include:

- Reduces transparency and public input by shortening EFSC review timelines and creating presumptions of project compliance, weakening environmental and community oversight.
- Doubles site certificate duration from 3 to 6 years, risking harm to wildlife due to delayed construction in a changing climate and wildfire-prone environment.
- Encourages "site banking" by allowing energy developers to hold land long-term without building, blocking other beneficial uses and contradicting Oregon policy.
- Limits contested case proceedings to 12 months, an unrealistic timeline for reviewing complex energy projects, likely leading to rushed, flawed decisions, more impacts to sensitive species, and more legal challenges.
- Restricts judicial review by barring court appeals on issues not personally raised during EFSC hearings, undermining fairness, public accountability, and the rule of law.
- Undermines court authority by requiring EFSC to include all contested case decisions in final

- orders, burdening the Oregon Supreme Court and reversing prior legal rulings.
- Weakens land use oversight by removing requirements for certificate amendments when expanding site boundaries, threatening farmlands and wildlife protections.
- Contradicts Oregon's values of transparent, participatory land use and environmental stewardship, setting harmful precedents and eroding public trust.

Friends urges the Legislature to reject HB 3681-A in its current form and instead support reforms that uphold, not diminish, Oregon's landmark land use system and continue to protect wildlife.

Please see Friends' supplemental comments (Attachment 1) which expand on the points above and explain the full extent of the organization's concerns with this bill.

Sincerely,
Madison Kenney
Advocacy & Policy Coordinator

Attachment 1: Friends' supplemental comments

Of greatest concern are the significant lengthening of temporal durations for EFSC certificates, the compressions of EFSC review timelines, and the weakening of contested case rights. The proposed doubling of the initial duration of energy site certificates (from three years to six years, prior to any extensions) does not make sense in this era of rapid climate change and wildfires, especially with many of these energy projects now being constructed on farmlands and brushlands. HB 3681-A would threaten wildlife because animals can relocate to new areas in the aftermath of wildfires, potentially moving into a project site after wildlife review is complete but before project construction begins. A six-year initial duration for site certificates is too long to adequately protect birds, bats, and sensitive terrestrial species.

This bill is unneeded and would severely hamstring the public's ability to ensure that changing environmental conditions and laws are properly factored into the review process. EFSC rules currently allow potential time extensions for construction commencement deadlines up to a cumulative six years, with proper environmental review. The Legislature should favor the current system of requiring certificate holders to seek extensions if and when they have not commenced construction within three years. Otherwise, the Legislature will be allowing impermissible energy "site banking" (*i.e.*, locking up energy sites for extended periods of time without any construction, thus precluding alternate beneficial uses of the site), a practice that has long been expressly disfavored by the Legislature.

In addition, curtailing EFSC's contested case proceedings to an artificially low limit of only 12 months is unnecessarily restrictive and unworkable in practice. These are big, complex projects, with numerous laws, rules, and standards from multiple jurisdictions that must be applied to them. With typical EFSC staffing levels, it often takes EFSC much longer than 12 months to hear and decide contested cases. If the review timeline were artificially compressed down to 12 months, corners will have to be cut, ensuring more violations of applicable law as well as more appeals.

The bill would severely limit appellants' rights to raise issues on judicial review, thus unfairly short-circuiting public participation and all but ensuring that unlawful, harmful projects will be constructed. Specifically, the bill would prevent appellants from raising an issue in the courts if that specific appellant had not previously raised that specific issue in the EFSC proceeding. This proposed change in law would preclude citizens from securing review of the legality of an EFSC final order on issues that the agency decided on someone else's initiative. This would ensure that some unlawful decisions are not appealed, thus preventing public participation in the appeals phase. Arbitrarily insulating unlawful decisions from judicial review is not in Oregon's best interest.

Section 2 of the bill would require EFSC to include in all its final orders approving or rejecting an application for a site certificate or amended site certificate "any decisions relating to or arising from a contested case on the application." This would directly undermine the Oregon Court of Appeals decision in *Friends of the Columbia Gorge v. EFSC*, 314 Or App 143 (2021), which held that the lower courts have jurisdiction over EFSC orders other than final orders on certificate applications. Moreover, the change in law would needlessly overburden the Oregon Supreme Court with EFSC-related cases, frustrating judicial efficiency and sapping the already limited resources of the highest court in the state.

Section 3 of the bill would remove the important requirement that when a developer seeks to expand the site boundaries for an energy facility they must apply for an amendment to the site certificate. This

significant change in the law would undermine the Oregon Supreme Court's decision in *Friends of the Columbia Gorge v. EFSC*, which confirmed that certificate amendments are required for expansions of site boundaries. 368 Or 123, 134–37 (2021). Statutorily waiving the requirements for certificate amendments for expansions of site boundaries would prevent meaningful analysis of the new proposed site for land use compliance, wildlife surveys and protections, and other potential conflicts. Friends is particularly concerned about the threat this bill poses to Oregon's farmlands. These lands are protected for many reasons: to safeguard agricultural productivity, rural communities, and food security. The weakening of EFSC's obligations to rigorously evaluate land use compliance could result in energy developments irreversibly fragmenting and industrializing farmlands, contrary to the intent of Oregon's land use planning framework.

Energy development must be responsible, balanced, and consistent with Oregon's conservation values. Fast-tracking controversial facilities by weakening land use standards and environmental review, and effectively shutting out meaningful participation from the public and affected communities, is not consistent with the Oregon way. Oregon has long prided itself on transparent, participatory land use and administrative agency processes, and allowing its citizens their "day in court." This bill undercuts those processes, sets dangerous precedents, and erodes public trust.