

House Bill 2171

Sponsored by Representative KRIEGER (Presession filed.)

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 **as introduced**.

Provides that person has right to trial in circuit court if agency proposes to impose civil penalty of \$2,000 or more against person. Requires that proceedings to impose civil penalty be treated as action at law.

A BILL FOR AN ACT

1
2 Relating to civil penalties; creating new provisions; and amending ORS 183.415, 183.745, 527.687 and
3 757.994.

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

5 **SECTION 1.** ORS 183.745 is amended to read:

6 183.745. (1) Except as otherwise provided by law, an agency may [*only*] impose a civil penalty
7 **only** as provided in this section.

8 (2) A civil penalty imposed under this section shall become due and payable 10 days after the
9 order imposing the civil penalty becomes final by operation of law or on appeal. A person against
10 whom a civil penalty is to be imposed shall be served with a notice in the form provided in ORS
11 183.415. Service of the notice shall be accomplished in the manner provided by ORS 183.415.

12 (3) The person to whom the notice is addressed shall have 20 days from the date of service of
13 the notice provided for in subsection (2) of this section in which to make written application for a
14 hearing. The agency may by rule provide for a longer period of time in which application for a
15 hearing may be made. If no application for a hearing is made within the time allowed, the agency
16 may make a final order imposing the penalty. A final order entered under this subsection need not
17 be delivered or mailed to the person against whom the civil penalty is imposed.

18 (4) **If an agency proposes to impose a civil penalty of \$2,000 or more against a person, the**
19 **person has the right to request a trial in circuit court. If the notice served on the person**
20 **indicates that the agency seeks to impose a civil penalty of \$2,000 or more, a request for**
21 **hearing under subsection (3) of this section must specify whether the person requests an**
22 **administrative hearing or a trial in circuit court. If the person requests a trial, the agency**
23 **must file a proceeding in circuit court within 20 days after receipt of the request. If the**
24 **agency does not file a proceeding within the time allowed, the order imposing the civil pen-**
25 **alty is of no further force or effect. A proceeding under this subsection shall be treated as**
26 **an action at law for all purposes, including right to jury trial and scope of review on appeal.**

27 [(4)] (5) Any person who makes application as provided for in subsection (3) of this section shall
28 be entitled to a hearing. **Except as provided in subsection (4) of this section,** the hearing shall
29 be conducted as a contested case hearing pursuant to the applicable provisions of ORS 183.413 to
30 183.470.

31 [(5)] (6) Judicial review of an order made after a hearing under subsection [(4)] (5) of this sec-

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.

tion shall be as provided in ORS 183.480 to 183.497 for judicial review of contested cases.

[(6) *When an order assessing a civil penalty under this section becomes final by operation of law or on appeal, and the amount of penalty is not paid within 10 days after the order becomes final, the order may be recorded with the county clerk in any county of this state. The clerk shall thereupon record the name of the person incurring the penalty and the amount of the penalty in the County Clerk Lien Record.*]

(7) If a trial is requested under subsection (4) of this section, an order imposing a civil penalty may be enforced upon entry of a judgment in the proceedings that is no longer subject to appeal. If a trial is not requested, an order imposing a civil penalty under this section may be recorded with the county clerk in any county of this state after the order becomes final by operation of law or on appeal.

[(7)] **(8)** This section does not apply to penalties:

- (a) Imposed under the tax laws of this state;
- (b) Imposed under the provisions of ORS 646.760 or 652.332;
- (c) Imposed under the provisions of ORS chapter 654, 656 or 659A; or
- (d) Imposed by the Public Utility Commission.

[(8)] **(9)** This section creates no new authority in any agency to impose civil penalties.

[(9)] **(10)** This section does not affect:

(a) Any right under any other law that an agency may have to bring an action in a court of this state to recover a civil penalty; or

(b) The ability of an agency to collect a properly imposed civil penalty under the provisions of ORS 305.830.

[(10)] **(11)** The notice provided for in subsection (2) of this section may be made part of any other notice served by the agency under ORS 183.415.

[(11)] **(12)** Informal disposition of proceedings under this section, whether by stipulation, agreed settlement, consent order or default, may be made at any time.

[(12)] **(13)** In addition to any other remedy provided by law, recording an order in the County Clerk Lien Record pursuant to the provisions of this section has the effect provided for in ORS 205.125 and 205.126, and the order may be enforced as provided in ORS 205.125 and 205.126.

[(13)] **(14)** As used in this section:

- (a) “Agency” has that meaning given in ORS 183.310.
- (b) “Civil penalty” includes only those monetary penalties that are specifically denominated as civil penalties by statute.

SECTION 2. ORS 183.415 is amended to read:

183.415. (1) The Legislative Assembly finds that persons affected by actions taken by state agencies have a right to be informed of their rights and remedies with respect to the actions.

(2) In a contested case, all parties shall be afforded an opportunity for hearing after reasonable notice, served personally or by registered or certified mail.

(3) Notice under this section must include:

(a) A statement of the party’s right to hearing, with a description of the procedure and time to request a hearing, or a statement of the time and place of the hearing;

(b) A statement of the person’s right to request a trial if the state agency seeks to impose a civil penalty of \$2,000 or more;

[(b)] (c) A statement of the authority and jurisdiction under which the hearing is to be held;

[(c)] (d) A reference to the particular sections of the statutes and rules involved;

1 [(d)] (e) A short and plain statement of the matters asserted or charged; and

2 [(e)] (f) A statement indicating whether and under what circumstances an order by default may
3 be entered.

4 **SECTION 3.** ORS 527.687 is amended to read:

5 527.687. (1) Subject to the notice provisions of ORS 527.683, any civil penalty under ORS 527.992
6 shall be imposed in the manner provided in ORS 183.745.

7 (2) In no case shall [a] **an administrative hearing or trial** requested under ORS 183.745 be held
8 less than 45 days from the date of service of the notice of penalty to allow the party to prepare
9 testimony. The hearing shall be held not more than 180 days following issuance of the notice unless
10 all parties agree on an extension.

11 (3) Hearings under this section shall be conducted by an administrative law judge assigned from
12 the Office of Administrative Hearings established under ORS 183.605.

13 (4) Except as provided in subsection (5) of this section, all civil penalties recovered under ORS
14 527.610 to 527.770, 527.990 and 527.992 shall be paid to the General Fund.

15 (5) Civil penalties recovered under ORS 527.685 (5) shall be deposited in the State Forestry De-
16 partment Account under ORS 526.060 and used, consistently with ORS 527.690, by the State Forester
17 to reforest the land that is the subject of a violation of ORS 527.745 or rules for reforestation
18 adopted pursuant to ORS 527.745. Civil penalties described in this subsection that exceed the costs
19 of reforestation shall be paid to the General Fund.

20 **SECTION 4.** ORS 757.994 is amended to read:

21 757.994. (1) In addition to all other penalties provided by law, a person who violates any statute,
22 rule or order of the Public Utility Commission related to water utilities is subject to a civil penalty
23 of not more than \$500 for each violation. The commission may require that penalties imposed under
24 this section be used for the benefit of the customers of water utilities affected by the violation.

25 (2) Notwithstanding ORS 183.745 [(7)(d)] **(8)(d)**, 183.315 (6) and 756.500 to 756.610, civil penalties
26 under this section must be imposed by the commission as provided in ORS 183.745.

27 **SECTION 5. The amendments to ORS 183.415, 183.745, 527.687 and 757.994 by sections 1**
28 **to 4 of this 2013 Act apply only to agency orders imposing civil penalties for which notice is**
29 **given under ORS 183.415 on or after the effective date of this 2013 Act.**

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