

Senate Bill 43

Sponsored by Senator FINDLEY, Representative OWENS (at the request of Oregon Business and Industry) (Pre-session 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**.

Requires agencies to post certain information about rulemaking on agency websites.
Requires agencies to include certain information in rules.
Requires Attorney General to allow public to attend rulemaking training, for reasonable fee.
Prohibits agency rules coordinator from drafting rules.
Provides that agency may adopt rule no sooner than seven days after agency stops accepting public comment.
Provides that temporary rule adopted during and because of state of emergency may remain in effect until termination of state of emergency.
Provides that agency may not impose civil penalty under rule earlier than 30 days after the adoption of rule.

A BILL FOR AN ACT

1
2 Relating to administrative law; creating new provisions; and amending ORS 183.330, 183.335, 183.745,
3 469.085, 757.991, 757.994 and 757.995.

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

5 **SECTION 1. Sections 2 and 3 of this 2023 Act are added to and made a part of ORS**
6 **chapter 183.**

7 **SECTION 2. (1) An agency shall post on its main website notices of intended action under**
8 **ORS 183.335, the dates of hearings held under ORS 183.335 and the deadlines for public com-**
9 **ment before adoption, amendment or repeal of a rule.**

10 **(2) An agency shall post on its main website a summary of each rule for which the**
11 **agency gives notice of intended action under ORS 183.335. The summary must include:**

12 **(a) A statement understandable to the general public of the need for the rule, the prob-**
13 **lem the rule is intended to solve and how the rule is intended to meet the need and resolve**
14 **the problem.**

15 **(b) A link to or copy of any federal law or regulation that the rule seeks to implement.**

16 **(c) A link to or copy of any new state law that the rule seeks to implement.**

17 **(d) A statement of whether an advisory committee was appointed under the provisions**
18 **of ORS 183.333, the members of the advisory committee and how many meetings the advisory**
19 **committee conducted.**

20 **(e) A link to or copy of the fiscal impact statement required under ORS 183.335 (2)(b)(E).**

21 **(3) An agency shall post on its main website a summary of each rule the agency files with**
22 **the Secretary of State under ORS 183.355. The summary must include:**

23 **(a) A statement understandable to the general public of the need for the rule, the prob-**
24 **lem the rule is intended to solve and how the rule is intended to meet the need and resolve**
25 **the problem.**

26 **(b) A citation of the statutory or other legal authority relied upon and bearing upon the**

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.

1 **promulgation of the rule.**

2 (c) **A list of definitions that apply to the rule, if the definitions are not included in the**
 3 **rule before any other provisions of the rule.**

4 (d) **A statement of whether an advisory committee was appointed under the provisions**
 5 **of ORS 183.333, the members of the advisory committee, how many meetings the advisory**
 6 **committee conducted and the recommendations of the advisory committee.**

7 (e) **A description of hearings held by the agency on the rule and the public comments**
 8 **received by the agency on the rule.**

9 (f) **A description of how the rule changes current practice for the agency and for regu-**
 10 **lated parties.**

11 (g) **A description of what regulated parties will have to do to comply with the rule.**

12 (h) **A statement of the effective date of the rule.**

13 (i) **The contact information of a person in the agency who can answer questions about**
 14 **the rule.**

15 (j) **A statement of where updated information on the rule will be published.**

16 (4) **An agency shall post the full text of a rule on its main website for at least 30 days**
 17 **after filing the rule with the Secretary of State under ORS 183.355.**

18 **SECTION 3. (1) If a rule contains definitions, the definitions must be placed before any**
 19 **other provisions of the rule.**

20 (2) **If a rule contains terms that are not familiar to the general public, the agency shall**
 21 **define the terms in the rule.**

22 (3) **If a rule contains a reference to a chemical, the agency shall describe in the rule what**
 23 **the chemical is used for.**

24 (4) **If a rule contains a reference to a federal law or rule, the agency shall summarize in**
 25 **the rule the effect of the federal law or rule.**

26 **SECTION 4. If the Attorney General offers training to agencies on rulemaking, the At-**
 27 **torney General shall allow the public to attend the training. The Attorney General may**
 28 **charge members of the public a reasonable fee for attending the training.**

29 **SECTION 5. ORS 183.330 is amended to read:**

30 183.330. (1) **In addition to other rulemaking requirements imposed by law, each agency shall**
 31 **publish a description of its organization and the methods whereby the public may obtain information**
 32 **or make submissions or requests.**

33 (2) **Each state agency that adopts rules shall appoint a rules coordinator and file a copy of that**
 34 **appointment with the Secretary of State. **The rules coordinator may not draft the rules adopted****
 35 **by the agency.** The rules coordinator shall:

36 (a) **Maintain copies of all rules adopted by the agency;**

37 (b) **Provide to the public, upon request, information pertaining to:**

38 (A) **All rulemaking proceedings of the agency;**

39 (B) **The status of the agency's rules; and**

40 (C) **All certificates and rules filed by the agency with the Secretary of State; and**

41 (c) **Keep and make available the mailing list required by ORS 183.335 (8).**

42 (3) **An order shall not be effective as to any person or party unless it is served upon the person**
 43 **or party either personally or by mail. This subsection is not applicable in favor of any person or**
 44 **party who has actual knowledge of the order.**

45 (4) **An order is not final until it is reduced to writing.**

1 **SECTION 6.** ORS 183.335, as amended by section 6, chapter 97, Oregon Laws 2022, is amended
2 to read:

3 183.335. (1) Prior to the adoption, amendment or repeal of any rule, the agency shall give notice
4 of its intended action:

5 (a) In the manner established by rule adopted by the agency under ORS 183.341 (4), which pro-
6 vides a reasonable opportunity for interested persons to be notified of the agency's proposed action;

7 (b) In the bulletin referred to in ORS 183.360 at least 21 days prior to the effective date;

8 (c) At least 28 days before the effective date, to persons who have requested notice pursuant to
9 subsection (8) of this section; and

10 (d) Delivered only by electronic mail, at least 49 days before the effective date, to the persons
11 specified in subsection (15) of this section.

12 (2)(a) The notice required by subsection (1) of this section must include:

13 (A) A caption of not more than 15 words that reasonably identifies the subject matter of the
14 agency's intended action. The agency shall include the caption on each separate notice, statement,
15 certificate or other similar document related to the intended action.

16 (B) An objective, simple and understandable statement summarizing the subject matter and
17 purpose of the intended action in sufficient detail to inform a person that the person's interests may
18 be affected, and the time, place and manner in which interested persons may present their views on
19 the intended action.

20 (b) The agency shall include with the notice of intended action given under subsection (1) of this
21 section:

22 (A) A citation of the statutory or other legal authority relied upon and bearing upon the
23 promulgation of the rule;

24 (B) A citation of the statute or other law the rule is intended to implement;

25 (C) A statement of the need for the rule and a statement of how the rule is intended to meet the
26 need;

27 (D) A list of the principal documents, reports or studies, if any, prepared by or relied upon by
28 the agency in considering the need for and in preparing the rule, and a statement of the location
29 at which those documents are available for public inspection. The list may be abbreviated if neces-
30 sary, and if so abbreviated there shall be identified the location of a complete list;

31 (E) A statement of fiscal impact identifying state agencies, units of local government and the
32 public that may be economically affected by the adoption, amendment or repeal of the rule and an
33 estimate of that economic impact on state agencies, units of local government and the public. In
34 considering the economic effect of the proposed action on the public, the agency shall utilize avail-
35 able information to project any significant economic effect of that action on businesses which shall
36 include a cost of compliance effect on small businesses affected. For an agency specified in ORS
37 183.530, the statement of fiscal impact shall also include a housing cost impact statement as de-
38 scribed in ORS 183.534;

39 (F) A statement identifying how adoption of the rule will affect racial equity in this state;

40 (G) If an advisory committee is not appointed under the provisions of ORS 183.333, an explana-
41 tion as to why no advisory committee was used to assist the agency in drafting the rule; and

42 (H) A request for public comment on whether other options should be considered for achieving
43 the rule's substantive goals while reducing the negative economic impact of the rule on business.

44 (c) The Secretary of State may omit the information submitted under paragraph (b) of this sub-
45 section from publication in the bulletin referred to in ORS 183.360.

1 (d) When providing notice of an intended action under subsection (1)(c) of this section, the
2 agency shall provide a copy of the rule that the agency proposes to adopt, amend or repeal, or an
3 explanation of how the person may acquire a copy of the rule. The copy of an amended rule shall
4 show all changes to the rule by striking through material to be deleted and underlining all new
5 material, or by any other method that clearly shows all new and deleted material.

6 (3)(a) When an agency proposes to adopt, amend or repeal a rule, it shall give interested persons
7 reasonable opportunity to submit data or views. Opportunity for oral hearing shall be granted upon
8 request received from 10 persons or from an association having not less than 10 members before the
9 earliest date that the rule could become effective after the giving of notice pursuant to subsection
10 (1) of this section. An agency holding a hearing upon a request made under this subsection shall give
11 notice of the hearing at least 21 days before the hearing to the person who has requested the
12 hearing, to persons who have requested notice pursuant to subsection (8) of this section and to the
13 persons specified in subsection (15) of this section. The agency shall publish notice of the hearing
14 in the bulletin referred to in ORS 183.360 at least 14 days before the hearing. The agency shall
15 consider fully any written or oral submission. **The agency may file the rule with the Secretary
16 of State under ORS 183.355 no sooner than seven days after the agency stops accepting public
17 comment.**

18 (b) If an agency is required to conduct an oral hearing under paragraph (a) of this subsection,
19 and the rule for which the hearing is to be conducted applies only to a limited geographical area
20 within this state, or affects only a limited geographical area within this state, the hearing shall be
21 conducted within the geographical area at the place most convenient for the majority of the resi-
22 dents within the geographical area. At least 14 days before a hearing conducted under this para-
23 graph, the agency shall publish notice of the hearing in the bulletin referred to in ORS 183.360 and
24 in a newspaper of general circulation published within the geographical area that is affected by the
25 rule or to which the rule applies. If a newspaper of general circulation is not published within the
26 geographical area that is affected by the rule or to which the rule applies, the publication shall be
27 made in the newspaper of general circulation published closest to the geographical area.

28 (c) Notwithstanding paragraph (a) of this subsection, the Department of Corrections and the
29 State Board of Parole and Post-Prison Supervision may adopt rules limiting participation by adults
30 in custody in the proposed adoption, amendment or repeal of any rule to written submissions.

31 (d) If requested by at least five persons before the earliest date that the rule could become ef-
32 fective after the agency gives notice pursuant to subsection (1) of this section, the agency shall
33 provide a statement that identifies the objective of the rule and a statement of how the agency will
34 subsequently determine whether the rule is in fact accomplishing that objective.

35 (e) An agency that receives data or views concerning proposed rules from interested persons
36 shall maintain a record of the data or views submitted. The record shall contain:

37 (A) All written materials submitted to an agency in response to a notice of intent to adopt,
38 amend or repeal a rule.

39 (B) A recording or summary of oral submissions received at hearings held for the purpose of
40 receiving those submissions.

41 (C) Any public comment received in response to the request made under subsection (2)(b)(H) of
42 this section and the agency's response to that comment.

43 (D) Any statements provided by the agency under paragraph (d) of this subsection.

44 (4) Upon request of an interested person received before the earliest date that the rule could
45 become effective after the giving of notice pursuant to subsection (1) of this section, the agency shall

1 postpone the date of its intended action no less than 21 nor more than 90 days in order to allow the
2 requesting person an opportunity to submit data, views or arguments concerning the proposed
3 action. Nothing in this subsection shall preclude an agency from adopting a temporary rule pursuant
4 to subsection (5) of this section.

5 (5) Notwithstanding subsections (1) to (4) of this section, an agency may adopt, amend or sus-
6 pend a rule without prior notice or hearing or upon any abbreviated notice and hearing that it finds
7 practicable, if the agency prepares:

8 (a) A statement of its findings that its failure to act promptly will result in serious prejudice to
9 the public interest or the interest of the parties concerned and the specific reasons for its findings
10 of prejudice;

11 (b) A citation of the statutory or other legal authority relied upon and bearing upon the
12 promulgation of the rule;

13 (c) A statement of the need for the rule and a statement of how the rule is intended to meet the
14 need;

15 (d) A list of the principal documents, reports or studies, if any, prepared by or relied upon by
16 the agency in considering the need for and in preparing the rule, and a statement of the location
17 at which those documents are available for public inspection; and

18 (e) For an agency specified in ORS 183.530, a housing cost impact statement as defined in ORS
19 183.534.

20 (6)(a) A rule adopted, amended or suspended under subsection (5) of this section is temporary
21 and may be effective for a period of not longer than 180 days. The adoption of a rule under this
22 subsection does not preclude the subsequent adoption of an identical rule under subsections (1) to
23 (4) of this section.

24 (b) A rule temporarily suspended shall regain effectiveness upon expiration of the temporary
25 period of suspension unless the rule is repealed under subsections (1) to (4) of this section.

26 (c) **Notwithstanding paragraph (a) of this subsection, if a rule adopted, amended or sus-**
27 **pending under subsection (5) of this section is adopted during and because of a state of**
28 **emergency declared under ORS 401.165 or a state of public health emergency declared under**
29 **ORS 433.441, the rule may remain in effect until the termination of the state of emergency.**

30 (7) Notwithstanding subsections (1) to (4) of this section, an agency may amend a rule without
31 prior notice or hearing if the amendment is solely for the purpose of:

32 (a) Changing the name of an agency by reason of a name change prescribed by law;

33 (b) Changing the name of a program, office or division within an agency as long as the change
34 in name does not have a substantive effect on the functions of the program, office or division;

35 (c) Correcting spelling;

36 (d) Correcting grammatical mistakes in a manner that does not alter the scope, application or
37 meaning of the rule;

38 (e) Correcting statutory or rule references;

39 (f) Correcting addresses or telephone numbers referred to in the rules; or

40 (g) Changing a term or phrase in order to conform with a change prescribed by law.

41 (8)(a) Any person may request in writing that an agency send to the person copies of the
42 agency's notices of intended action issued under subsection (1) of this section. The person must
43 provide an address where the person elects to receive notices. The address provided may be a postal
44 mailing address or, if the agency provides notice by electronic mail, may be an electronic mailing
45 address.

1 (b) A request under this subsection must indicate that the person requests one of the following:

2 (A) The person may request that the agency mail paper copies of the proposed rule and other
3 information required by subsection (2) of this section to the postal mailing address.

4 (B) *[If the agency posts notices of intended action on a website,]* The person may request that the
5 agency mail the information required by subsection (2)(a) of this section to the postal mailing ad-
6 dress with a reference to the website where electronic copies of the proposed rule and other infor-
7 mation required by subsection (2) of this section are posted.

8 (C) The person may request that the agency electronically mail the information required by
9 subsection (2)(a) of this section to the electronic mailing address, and either provide electronic
10 copies of the proposed rule and other information required by subsection (2) of this section or pro-
11 vide a reference to a website where electronic copies of the proposed rule and other information
12 required by subsection (2) of this section are posted.

13 (c) Upon receipt of any request under this subsection, the agency shall acknowledge the request,
14 establish a mailing list and maintain a record of all mailings made pursuant to the request. Agen-
15 cies may establish procedures for establishing the mailing lists and keeping the mailing lists current.
16 Agencies by rule may establish fees necessary to defray the costs of mailings and maintenance of
17 the lists.

18 (d) Members of the Legislative Assembly who receive notices under subsection (15) of this sec-
19 tion may request that an agency furnish paper copies of the notices.

20 (9) This section does not apply to rules establishing an effective date for a previously effective
21 rule or establishing a period during which a provision of a previously effective rule will apply.

22 (10) This section does not apply to ORS 279.835 to 279.855, 279A.140 to 279A.161, 279A.250 to
23 279A.290, 279A.990, 279B.050 to 279B.085, 279B.200 to 279B.240, 279B.270, 279B.275, 279B.280,
24 279C.360, 279C.365, 279C.370, 279C.375, 279C.380, 279C.385, 279C.500 to 279C.530, 279C.540, 279C.545,
25 279C.550 to 279C.570, 279C.580, 279C.585, 279C.590, 279C.600 to 279C.625, 279C.650 to 279C.670 and
26 279C.800 to 279C.870 relating to public contracts and purchasing.

27 (11)(a) Except as provided in paragraph (c) of this subsection, a rule is not valid unless adopted
28 in substantial compliance with the provisions of this section in effect on the date that the notice
29 required under subsection (1) of this section is delivered to the Secretary of State for the purpose
30 of publication in the bulletin referred to in ORS 183.360.

31 (b) In addition to all other requirements with which rule adoptions must comply, a rule other
32 than a rule amended for a purpose described in subsection (7) of this section is not valid if the rule
33 has not been submitted to the Legislative Counsel in the manner required by ORS 183.355 and
34 183.715.

35 (c) A rule is not subject to judicial review or other challenge by reason of failing to comply with
36 subsection (2)(a)(A) of this section.

37 (12)(a) Notwithstanding the provisions of subsection (11) of this section, but subject to paragraph
38 (b) of this subsection, an agency may correct its failure to substantially comply with the require-
39 ments of subsections (2) and (5) of this section in adoption of a rule by an amended filing, as long
40 as the noncompliance did not substantially prejudice the interests of persons to be affected by the
41 rule.

42 (b) An agency may use an amended filing to correct a failure to include a fiscal impact state-
43 ment in a notice of intended action, as required by subsection (2)(b)(E) of this section, or to correct
44 an inaccurate fiscal impact statement, only if the agency developed the fiscal impact statement with
45 the assistance of an advisory committee or fiscal impact advisory committee appointed under ORS

1 183.333.

2 (13) Unless otherwise provided by statute, the adoption, amendment or repeal of a rule by an
 3 agency need not be based upon or supported by an evidentiary record.

4 (14) When an agency has established a deadline for comment on a proposed rule under the pro-
 5 visions of subsection (3)(a) of this section, the agency may not extend that deadline for another
 6 agency or person unless the extension applies equally to all interested agencies and persons. An
 7 agency shall not consider any submission made by another agency after the final deadline has
 8 passed.

9 (15) The notices required under subsections (1) and (3) of this section must be given by the
 10 agency to the following persons:

11 (a) If the proposed adoption, amendment or repeal results from legislation that was passed
 12 within two years before notice is given under subsection (1) of this section, notice shall be given to
 13 the legislator who introduced the bill that subsequently was enacted into law, and to the chair or
 14 cochairs of all committees that reported the bill out, except for those committees whose sole action
 15 on the bill was referral to another committee.

16 (b) If the proposed adoption, amendment or repeal does not result from legislation that was
 17 passed within two years before notice is given under subsection (1) of this section, notice shall be
 18 given to the chair or cochairs of any interim or session committee with authority over the subject
 19 matter of the rule.

20 (c) If notice cannot be given under paragraph (a) or (b) of this subsection, notice shall be given
 21 to the Speaker of the House of Representatives and to the President of the Senate who are in office
 22 on the date the notice is given.

23 (16)(a) Upon the request of a member of the Legislative Assembly or of a person who would be
 24 affected by a proposed adoption, amendment or repeal, the committees receiving notice under sub-
 25 section (15) of this section shall review the proposed adoption, amendment or repeal for compliance
 26 with the legislation from which the proposed adoption, amendment or repeal results.

27 (b) The committees shall submit their comments on the proposed adoption, amendment or repeal
 28 to the agency proposing the adoption, amendment or repeal.

29 **SECTION 7.** ORS 183.745 is amended to read:

30 183.745. (1) Except as otherwise provided by law, an agency may only impose a civil penalty as
 31 provided in this section.

32 **(2) An agency may not impose a civil penalty under a rule earlier than 30 days after the**
 33 **adoption of the rule.**

34 [(2)] **(3)** A civil penalty imposed under this section shall become due and payable 10 days after
 35 the order imposing the civil penalty becomes final by operation of law or on appeal. A person
 36 against whom a civil penalty is to be imposed shall be served with a notice in the form provided in
 37 ORS 183.415. Service of the notice shall be accomplished in the manner provided by ORS 183.415.

38 [(3)] **(4)** The person to whom the notice is addressed shall have 20 days from the date of service
 39 of the notice provided for in subsection [(2)] **(3)** of this section in which to make written application
 40 for a hearing. The agency may by rule provide for a longer period of time in which application for
 41 a hearing may be made. If no application for a hearing is made within the time allowed, the agency
 42 may make a final order imposing the penalty. A final order entered under this subsection need not
 43 be delivered or mailed to the person against whom the civil penalty is imposed.

44 [(4)] **(5)** Any person who makes application as provided for in subsection [(3)] **(4)** of this section
 45 shall be entitled to a hearing. The hearing shall be conducted as a contested case hearing pursuant

1 to the applicable provisions of ORS 183.413 to 183.470.

2 [(5)] (6) Judicial review of an order made after a hearing under subsection [(4)] (5) of this sec-
 3 tion shall be as provided in ORS 183.480 to 183.497 for judicial review of contested cases.

4 [(6)] (7) When an order assessing a civil penalty under this section becomes final by operation
 5 of law or on appeal, and the amount of penalty is not paid within 10 days after the order becomes
 6 final, the order may be recorded with the county clerk in any county of this state. The clerk shall
 7 thereupon record the name of the person incurring the penalty and the amount of the penalty in the
 8 County Clerk Lien Record.

9 [(7)] (8) This section does not apply to penalties:

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

14 [(8)] (9) This section creates no new authority in any agency to impose civil penalties.

15 [(9)] (10) This section does not affect:

- 16 (a) Any right under any other law that an agency may have to bring an action in a court of this
 17 state to recover a civil penalty; or
- 18 (b) The ability of an agency to collect a properly imposed civil penalty under the provisions of
 19 ORS 305.830.

20 [(10)] (11) The notice provided for in subsection [(2)] (3) of this section may be made part of any
 21 other notice served by the agency under ORS 183.415.

22 [(11)] (12) Informal disposition of proceedings under this section, whether by stipulation, agreed
 23 settlement, consent order or default, may be made at any time.

24 [(12)] (13) In addition to any other remedy provided by law, recording an order in the County
 25 Clerk Lien Record pursuant to the provisions of this section has the effect provided for in ORS
 26 205.125 and 205.126, and the order may be enforced as provided in ORS 205.125 and 205.126.

27 [(13)] (14) As used in this section:

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

31 **SECTION 8.** ORS 469.085 is amended to read:

32 469.085. (1) Except as otherwise provided in this section, civil penalties under ORS 469.992 shall
 33 be imposed as provided in ORS 183.745.

34 (2) Notwithstanding ORS 183.745 [(2)] (3), the notice to the person against whom a civil penalty
 35 is to be imposed shall reflect a complete statement of the consideration given to the factors listed
 36 in subsection (7) of this section. The notice may be served by either the Director of the State De-
 37 partment of Energy or the Energy Facility Siting Council.

38 (3) Notwithstanding ORS 183.745, if a hearing is not requested or if the person requesting a
 39 hearing fails to appear, a final order shall be entered upon a prima facie case made on the record
 40 of the agency.

41 (4) The provisions of this section are in addition to and not in lieu of any other penalty or
 42 sanction provided by law. An action taken by the director or the council under this section may be
 43 joined by the director or the council with any other action against the same person under this
 44 chapter.

45 (5) Any civil penalty recovered under this section shall be paid into the General Fund.

1 (6) The director or the council shall adopt by rule a schedule of the amount of civil penalty that
 2 may be imposed for a particular violation.

3 (7) In imposing a penalty under ORS 469.992, the director or the council shall consider:

4 (a) The past history of the person incurring a penalty in taking all feasible steps or procedures
 5 necessary or appropriate to correct or prevent any violation;

6 (b) Any prior violations of ORS chapter 469 or rules, orders or permits relating to the alleged
 7 violation;

8 (c) The impact of the violation on public health and safety or public interests in fishery, navi-
 9 gation and recreation;

10 (d) Any other factors determined by the director or the council to be relevant; and

11 (e) The alleged violator’s cooperativeness and effort to correct the violation.

12 (8) The penalty imposed under ORS 469.992 may be remitted or mitigated upon such terms and
 13 conditions as the director or council determines to be proper. Upon the request of the person in-
 14 curring the penalty, the director or council shall consider evidence of the economic and financial
 15 condition of the person in determining whether a penalty shall be remitted or mitigated.

16 **SECTION 9.** ORS 757.991 is amended to read:

17 757.991. (1)(a) Any person or municipality, or any agent, lessee, trustee or receiver of the person
 18 or municipality, engaged in the management, operation, ownership or control of facilities for the
 19 transmission or distribution of gas by pipeline, or of facilities for the storage or treatment of gas to
 20 be transmitted or distributed by pipeline, that fails to comply with ORS 757.039, or fails to comply
 21 with any order, rule or regulation of the Public Utility Commission made pursuant to ORS 757.039,
 22 is subject to a civil penalty established by rule by the commission.

23 (b) The civil penalty amount for a violation or series of violations described in this section may
 24 not exceed the administrative civil penalty amount set forth in 49 C.F.R. 190.223 for a violation or
 25 series of violations of the applicable federal law described therein.

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

28 (3) Civil penalties collected under this section must be paid into the General Fund and credited
 29 to the Public Utility Commission Account as described in ORS 756.990 (7).

30 **SECTION 10.** ORS 757.994 is amended to read:

31 757.994. (1) In addition to all other penalties provided by law, a person who violates any statute,
 32 rule or order of the Public Utility Commission related to water utilities is subject to a civil penalty
 33 of not more than \$500 for each violation. The commission may require that penalties imposed under
 34 this section be used for the benefit of the customers of water utilities affected by the violation.

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

37 **SECTION 11.** ORS 757.995 is amended to read:

38 757.995. (1) In addition to all other penalties provided by law, violation of ORS 757.963 or a rule
 39 adopted pursuant to ORS 757.963 is subject to a civil penalty not to exceed \$10,000.

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

42 (3) Civil penalties collected under this section must be paid into the General Fund and credited
 43 to the Public Utility Commission Account as described in ORS 756.990 (7).

44 **SECTION 12.** (1) **Sections 2 and 3 of this 2023 Act and the amendments to ORS 183.330**
 45 **and 183.335 by sections 5 and 6 of this 2023 Act apply to rules for which notice of intended**

1 **action is given on or after the effective date of this 2023 Act.**

2 **(2) The amendments to ORS 183.745 by section 7 of this 2023 Act apply to civil penalties**
3 **imposed on or after the effective date of this 2023 Act.**

4
