

HB 2438-3  
(LC 2730)  
3/21/19  
(MAM/RLM/ps)

Requested by HOUSE COMMITTEE ON AGRICULTURE AND LAND USE (at the Request of Representative Brian Clem)

**PROPOSED AMENDMENTS TO  
HOUSE BILL 2438**

1 Delete lines 4 through 20 of the printed bill and insert:

2 **“SECTION 1. (1) As used in this section, ‘public corporation’ means**  
3 **an entity that the State of Oregon creates to carry out a public pur-**  
4 **pose by participating in activities in which a private enterprise may**  
5 **also participate in the course of the private enterprise’s business.**

6 **“(2) The Oregon Mitigation Bank Corporation is created as an in-**  
7 **dependent public corporation with the purposes and powers set forth**  
8 **in section 2 of this 2019 Act. The corporation may register an assumed**  
9 **business name under ORS chapter 648 and use the assumed business**  
10 **name in the corporation’s operations, advertisements and communi-**  
11 **cations.**

12 **“(3) The Governor shall appoint, subject to Senate confirmation**  
13 **under Article III, section 4, of the Oregon Constitution, a board of**  
14 **seven directors for the corporation as follows:**

15 **“(a) One director who has extensive experience with real estate in-**  
16 **vesting;**

17 **“(b) One director who has extensive experience with real estate de-**  
18 **velopment;**

19 **“(c) One director who has extensive experience with real estate**  
20 **forecasting and speculation;**

1       “(d) One director who has extensive experience in mitigations bank  
2 construction, operation and management;

3       “(e) One director who has extensive experience in wetland functions  
4 and ecological values;

5       “(f) One director who has extensive experience in economics and  
6 finance; and

7       “(g) One director who has extensive experience in nontraditional  
8 investment markets.

9       “(4)(a) Except as provided in paragraph (b) of this subsection, a di-  
10 rector of the corporation may not have any pecuniary interest, other  
11 than an incidental interest that the director discloses and makes a  
12 matter of public record at the time the Governor appoints the director,  
13 in any business entity other than the corporation that, during the  
14 director’s term of office, will likely benefit, financially or otherwise,  
15 from the corporation’s operations.

16       “(b) A director appointed under subsection (3)(b) or (c) of this sec-  
17 tion may have a pecuniary interest in a business entity that might  
18 benefit in particular circumstances from the operations of the corpo-  
19 ration if the director discloses the interest to the corporation’s board  
20 of directors and offers to refrain from participating in a decision of the  
21 board of directors that might benefit the business entity in which the  
22 director has an interest. Unless the corporation’s bylaws provide  
23 otherwise, the board of directors shall exclude the director who dis-  
24 closed the interest from participating in the decision.

25       “(5) A director’s term of office is four years, but the director serves  
26 at the pleasure of the Governor. The Governor shall appoint a suc-  
27 cessor before a director’s term expires or a replacement for the re-  
28 mainder of a director’s term of office if the director’s position is  
29 vacant for any reason. The Governor’s appointment of a successor or  
30 replacement is immediately effective but is subject to Senate confir-

1 mation under Article III, section 4, of the Oregon Constitution. A di-  
2 rector is eligible for reappointment.

3 “(6) A director is entitled to compensation and expenses as provided  
4 in ORS 292.495.

5 “(7) The board of directors shall select one director as chairperson  
6 and another director as vice chairperson for terms and with duties and  
7 powers the board of directors considers necessary to perform the  
8 functions of chairperson and vice chairperson. A majority of the  
9 members of the board of directors constitutes a quorum for transact-  
10 ing business.

11 “(8) The board of directors shall meet at least once every three  
12 months at a time and place the board of directors designates or at  
13 other times and places that the chairperson or a majority of the board  
14 of directors specifies.

15 “(9) The board of directors shall establish bylaws and policies for  
16 operating and managing the corporation that:

17 “(a) Promote the purposes of the corporation; and

18 “(b) Are consistent with applicable provisions of the laws of this  
19 state.

20 “(10) Not later than April 15 of each year, the board of directors  
21 shall file with the Governor and the Legislative Assembly a report that  
22 describes the operations and activities of the corporation during the  
23 preceding year.

24 “(11) The board of directors shall appoint a president and officers  
25 whom the board of directors deems necessary to administer and man-  
26 age the Oregon Mitigation Bank Corporation. The president and offi-  
27 cers shall administer and manage the corporation’s affairs subject to  
28 the oversight and supervision of the board of directors.

29 **“SECTION 2. (1)(a) The Oregon Mitigation Bank Corporation is a**  
30 **governmental entity that performs governmental functions and exer-**

1 cises governmental powers, but does not have territorial boundaries  
2 within this state and is not a unit of local or municipal government  
3 or a state agency for the purposes of state statutes or constitutional  
4 provisions. The corporation shall carry out the purposes set forth in  
5 subsection (2) of this section and has the powers, rights and privileges  
6 that sections 1 to 12 of this 2019 Act expressly confer on the corpo-  
7 ration or that are otherwise implied by the laws of this state or are  
8 incident to expressly conferred powers, rights and privileges.

9 “(b) The corporation shall incorporate as a nonprofit corporation.  
10 Except to the extent set forth in sections 1 to 12 of this 2019 Act, the  
11 corporation is subject to ORS chapter 65 with respect to the  
12 corporation’s formation, governance, operation and dissolution and as  
13 to all other matters to which a nonprofit corporation would otherwise  
14 be subject. To the extent that a provision of sections 1 to 12 of this 2019  
15 Act conflicts with a provision of ORS chapter 65, the provision of  
16 sections 1 to 12 of this 2019 Act controls the governance and operations  
17 of the corporation and supersedes the provision of ORS chapter 65.

18 “(2) The purposes of the corporation are:

19 “(a) To purchase, contract to purchase, hold, market, and sell mit-  
20 igation bank credits, as defined in ORS 196.600, generated by wetlands  
21 mitigation banks, prioritizing activity in geographic areas in which  
22 credits are oversupplied or in areas where housing development is  
23 limited by an undersupply of credits;

24 “(b) To develop and maintain a practice and reputation of  
25 trustworthiness and reliability that can command the confidence of  
26 the creators of mitigation banks and credits and their investors, users  
27 of mitigation bank credits and their investors, other people that may  
28 purchase, hold, sell or invest in credits, the Department of State  
29 Lands, the State Department of Fish and Wildlife, the State Depart-  
30 ment of Agriculture, the Department of Environmental Quality, the

1 **United States Environmental Protection Agency and the United States**  
2 **Army Corps of Engineers;**

3 **“(c) To promote the purposes ORS of 196.600 to 196.655 listed in ORS**  
4 **196.605;**

5 **“(d) To explore, develop and use various mitigation bank credit fi-**  
6 **nancing, bundling, contracting, holding and marketing options to**  
7 **carry out the purposes of this subsection;**

8 **“(e) To manage and invest the corporation’s funds and assets, or**  
9 **funds and assets committed to the corporation’s care, prudently and**  
10 **with consideration for the long-term social, economic and ecological**  
11 **consequences of the corporation’s activities; and**

12 **“(f) To operate in such a way as to ensure the corporation’s con-**  
13 **tinued viability.**

14 **“(3) To carry out the purposes set forth in subsection (2) of this**  
15 **section, the corporation has the power to:**

16 **“(a) Acquire, purchase, receive, hold, own, control, lease, rent,**  
17 **manage, operate, use, improve, develop, construct, equip, furnish,**  
18 **lend, sell, convey, exchange or otherwise dispose of real and personal**  
19 **property of any description or nature;**

20 **“(b) Enter into partnerships, joint ventures or other business ar-**  
21 **rangements with any public or private entity;**

22 **“(c) Form or acquire subsidiary entities that, in the judgment of the**  
23 **board of directors, enable the corporation to effectively carry out the**  
24 **purposes set forth in this section;**

25 **“(d) Enter into contracts and other agreements with entities or in-**  
26 **dividuals with appropriate experience, expertise, capacity and knowl-**  
27 **edge related to any aspect of the corporation’s functions;**

28 **“(e) Employ, fix compensation for, discipline, dismiss and set em-**  
29 **ployment conditions and privileges in accordance with applicable law**  
30 **for any individual whom the corporation deems necessary to enable**

1 the corporation to carry out effectively the purposes set forth in this  
2 section;

3 “(f) Serve as a consultant to any person that develops, uses, holds  
4 or invests in the creation of mitigation bank credits;

5 “(g) Establish, assess, charge, collect and deposit fees, commissions,  
6 compensation for costs and expenses and any other charge or consid-  
7 eration for holding mitigation bank credits for a third party, providing  
8 consultation services and providing any other service that is consist-  
9 ent with the corporation’s purposes under this section, provided that  
10 the fee, commission, compensation, charge or consideration is:

11 “(A) Reasonable;

12 “(B) Amenable to financing, structuring, negotiation or adjustment  
13 to meet specific circumstances or hardships when necessary; and

14 “(C) Adequate to ensure the corporation’s financial and operational  
15 solvency, viability and continued existence;

16 “(h) Sue any public or private individual or entity in the  
17 corporation’s own name or be sued by any public or private individual  
18 or entity in the corporation’s own name in any local, state or federal  
19 forum;

20 “(i) Solicit and receive gifts and donations of money or property of  
21 any description or nature from any source for the corporation’s bene-  
22 fit and, subject to the terms of the gift or donation, retain, invest and  
23 use the gift or donation;

24 “(j) Acquire, receive, hold, keep, pledge, control, manage, use, lend,  
25 expend and invest all funds, appropriations, gifts, bequests, securities  
26 and revenue that the corporation obtains from any source;

27 “(k) Borrow money in amounts, for times and on terms that the  
28 corporation’s board of directors deems appropriate;

29 “(L) Issue bonds or other debt instruments in the name of the State  
30 of Oregon with the cooperation and under the supervision of the State

1 **Treasurer and in accordance with ORS chapter 289 and other applica-**  
2 **ble law;**

3 **“(m) Purchase insurance, operate a self-insurance program or oth-**  
4 **erwise arrange for equivalent insurance of any nature that is adequate**  
5 **for the risks that the corporation assumes in the corporation’s**  
6 **governance and operations;**

7 **“(n) Indemnify and defend, in cooperation with the Department of**  
8 **Justice, the corporation’s directors, officers, agents or employees;**

9 **“(o) Amend and repeal bylaws, administrative rules in accordance**  
10 **with ORS chapter 183, orders and policies and otherwise administer**  
11 **and manage the corporation’s affairs;**

12 **“(p) Make recommendations to the Legislative Assembly and the**  
13 **Department of State Lands regarding provisions of ORS 196.600 to**  
14 **196.655 and the rules and policies for implementing ORS 196.600 to**  
15 **196.655;**

16 **“(q) Perform any other act that in the judgment of the**  
17 **corporation’s board of directors is necessary or appropriate to carry**  
18 **out the corporation’s purposes; and**

19 **“(r) Exercise the powers set forth in this subsection, notwithstand-**  
20 **ing that by exercising the powers, the corporation engages in activities**  
21 **that state or federal antitrust laws may deem anticompetitive.**

22 **“(4) The corporation shall:**

23 **“(a) Establish bylaws for the corporation;**

24 **“(b) Establish criteria for evaluating the sale or purchase of crite-**  
25 **ria; and**

26 **“(c) Submit to the Oregon Department of Administrative Services**  
27 **by September 1 of each even-numbered year a budget request prepared**  
28 **according to generally accepted accounting principles for the depart-**  
29 **ment to submit as part of the Governor’s budget request.**

30 **“SECTION 3. (1) The Oregon Mitigation Bank Corporation shall es-**

1 **tablish no fewer than three and no more than 10 regional advisory**  
2 **committees for the purpose of providing guidance and direction to the**  
3 **corporation regarding mitigation banking and mitigation banking**  
4 **credits.**

5 **“(2) The corporation may establish the composition, structure,**  
6 **terms, functions, duties, budget and responsibilities of the regional**  
7 **advisory committees.**

8 **“(3) The corporation shall appoint to each regional advisory com-**  
9 **mittee members from the geographical region of the committee who**  
10 **may represent the Department of State Lands, the State Department**  
11 **of Fish and Wildlife, the State Department of Agriculture, the De-**  
12 **partment of Environmental Quality, the United States Environmental**  
13 **Protection Agency, the United States Army Corps of Engineers, miti-**  
14 **gation bank developers, real estate developers, or wetland scientists**  
15 **or engineers.**

16 **“(4) Each regional advisory committee shall appoint a chair of the**  
17 **committee who shall serve as a liaison to the corporation’s board of**  
18 **directors.**

19 **“SECTION 4. (1) ORS 279.835 to 279.855 and ORS chapters 240, 276,**  
20 **279A, 279B, 279C, 282, 283, 291, 292 and 293 do not apply to the Oregon**  
21 **Mitigation Bank Corporation.**

22 **“(2) Notwithstanding subsection (1) of this section, the corporation**  
23 **shall subscribe to the policy set forth in ORS 279A.015 with respect to**  
24 **the corporation’s contracting activities and shall commit to openness,**  
25 **impartiality and competition in awarding contracts. The corporation,**  
26 **by rule and policy, shall develop practices that are appropriate for the**  
27 **corporation and that encourage affirmative action, recycling, pur-**  
28 **chasing goods and services from qualified nonprofit agencies for indi-**  
29 **viduals with disabilities, paying prevailing wages that the Bureau of**  
30 **Labor and Industries specifies, providing or requiring workers’ com-**



1   pensation insurance for workers on contracts and ensuring that dis-  
2   advantaged business enterprises, minority-owned businesses,  
3   woman-owned businesses, businesses that service-disabled veterans  
4   own and emerging small businesses participate in contracts with the  
5   corporation or the corporation’s subsidiaries or contractors.

6    “(3) Notwithstanding subsection (1) of this section, ORS 293.240,  
7   293.260, 293.262 and 293.505 (2) apply to the directors, officers, employees  
8   and accounts of the Oregon Mitigation Bank Corporation and any  
9   subsidiary corporation that the Oregon Mitigation Bank Corporation  
10  forms or acquires to the same extent that the statutes apply to a state  
11  agency.

12  “(4) Notwithstanding subsection (1) of this section, ORS 200.005 to  
13  200.075, 200.090, 279A.100, 279A.105, 279A.107, 279A.110 and 279A.112 apply  
14  to the Oregon Mitigation Bank Corporation and the directors, officers  
15  and employees of the corporation as if the corporation were a con-  
16  tracting agency as defined in ORS 279A.010.

17  “(5) The Oregon Mitigation Bank Corporation may contract or  
18  agree with any state agency to perform duties and functions and to  
19  exercise powers imposed by law or otherwise committed to or con-  
20  ferred upon the corporation.

21  “(6) ORS 30.260 to 30.460, 236.605 to 236.640, 243.650 to 243.782, 297.040,  
22  307.090 and 307.112 and ORS chapters 35, 190, 192, 244 and 295 apply to  
23  the Oregon Mitigation Bank Corporation under the same terms as the  
24  statutes apply to public bodies, as defined in ORS 174.109, other than  
25  the State of Oregon.

26  “SECTION 5. (1) Legal title to real and personal property and any  
27  facilities that the State of Oregon acquired before the effective date  
28  of this 2019 Act that the Oregon Mitigation Bank Corporation uses or  
29  manages in accordance with sections 1 to 12 of this 2019 Act remains  
30  with the State of Oregon. The corporation has the exclusive care,

1 custody and control of the real and personal property and facilities  
2 under the terms of an exclusive leasehold interest in the real and  
3 personal property and facilities for a term of 99 years, subject to an  
4 earlier termination if the corporation is dissolved or is otherwise un-  
5 able to care for or maintain custody or control of the real or personal  
6 property. The term of the leasehold begins on the operative date of  
7 this section and, subject to the Governor’s approval, may be renewed  
8 for consecutive 99-year terms.

9 “(2) Notwithstanding any other provisions of the laws of this state  
10 concerning the authority of state agencies to lease real property and  
11 facilities, the Oregon Department of Administrative Services, acting  
12 on behalf of the State of Oregon, shall execute a lease for all real and  
13 personal property and facilities to which the State of Oregon has title  
14 and that the Oregon Mitigation Bank Corporation uses in accordance  
15 with sections 1 to 12 of this 2019 Act.

16 “(3) The Oregon Mitigation Bank Corporation shall pay the State  
17 of Oregon the sum of \$99 as consideration for each lease at the time  
18 the corporation executes the lease.

19 “(4) The Oregon Mitigation Bank Corporation shall manage and  
20 maintain all real and personal property and facilities that are subject  
21 to a lease described in this section. The corporation may not sell or  
22 convey legal title to, but may encumber, the real and personal prop-  
23 erty and facilities. The State of Oregon may encumber the real and  
24 personal property and facilities only in a manner that would not im-  
25 pair the financial condition of the corporation or the rights of any  
26 person that holds an obligation of the corporation.

27 **“SECTION 6. (1) The Oregon Mitigation Bank Corporation shall**  
28 **promptly and in writing notify the Legislative Assembly or the Emer-**  
29 **gency Board, if the Legislative Assembly is not in session, after dis-**  
30 **covering any shortfall in moneys available to pay when due an amount**

1 necessary to satisfy a bond or other debt obligation or an agreement  
2 to repay moneys the corporation borrowed. In the notification, the  
3 corporation shall specify the amount of the shortfall.

4 “(2) In enacting this section, the Legislative Assembly acknowl-  
5 edges an intention to provide, from funds other than funds previously  
6 appropriated to the Oregon Mitigation Bank Corporation, moneys  
7 necessary to pay the debt or obligation. This subsection does not,  
8 however, legally obligate the Legislative Assembly or the Emergency  
9 Board to provide funds for the purposes set forth in this section except  
10 to the extent that the Oregon Constitution may require the provision  
11 of funds.

12 “(3)(a) A director, officer or employee of the Oregon Mitigation  
13 Bank Corporation who has reason to believe that a defalcation has  
14 occurred at any office, facility or business location that the corpo-  
15 ration operates or maintains has an affirmative duty to report the  
16 defalcation and any information that forms the basis of the belief to  
17 the appropriate law enforcement officer or agency with jurisdiction of  
18 the matter.

19 “(b) The corporation and a law enforcement agency described in  
20 paragraph (a) of this subsection shall notify the Secretary of State and  
21 the Attorney General within five days after discovering a defalcation  
22 at any of the corporation’s offices, facilities or business locations.

23 “(c) The Secretary of State may conduct an immediate audit of the  
24 corporation’s finances and operations at the office, facility or business  
25 location where the defalcation occurred.

26 “(d) An audit under paragraph (c) of this subsection does not con-  
27 strain or prevent the corporation from conducting an internal audit  
28 of the operations of any of the offices, facilities or business locations  
29 at which a defalcation occurs.

30 “SECTION 7. (1) The Oregon Mitigation Bank Corporation Fund is

1 established in the State Treasury, separate and distinct from the  
2 General Fund. Interest, dividends or other income earned on the  
3 moneys in the Oregon Mitigation Bank Corporation Fund are credited  
4 to the fund.

5 “(2) Except for moneys otherwise designated by statute, the Oregon  
6 Mitigation Bank Corporation shall pay all fees, commissions, com-  
7 pensation for costs and expenses, assessments, charges, proceeds,  
8 gifts, donations and any other charge, consideration or moneys the  
9 corporation receives to the State Treasury and to the credit of the  
10 Oregon Mitigation Bank Corporation Fund. All moneys in the fund are  
11 continuously appropriated to the corporation for the purposes of  
12 sections 1 to 12 of this 2019 Act.

13 “(3) Subject to the terms, conditions or limits specified for a par-  
14 ticular gift or donation, the corporation may invest the moneys in the  
15 fund in accordance with section 9 of this 2019 Act.

16 “(4) The corporation may establish accounts and subaccounts  
17 within the fund that the corporation’s board of directors determines  
18 are necessary. The board of directors may credit any account or sub-  
19 account within the fund with interest, dividends or other income. The  
20 board of directors shall keep a record of the moneys deposited into the  
21 fund and shall indicate by separate cumulative accounts and subac-  
22 counts the sources from which the moneys are derived and the activ-  
23 ity, program or other expenditure against which each withdrawal is  
24 charged.

25 **“SECTION 8. (1) The Oregon Mitigation Bank Corporation, with an**  
26 **affirmative vote of the corporation’s board of directors after due con-**  
27 **sideration of the provisions of this section and the operational needs**  
28 **of the corporation, may specify an average daily amount of moneys**  
29 **on deposit with the corporation as a reserve amount that the corpo-**  
30 **ration must retain to satisfy the needs of the corporation for liquidity**

1 and access to deposited moneys.

2 “(2) The corporation may invest in accordance with section 9 of this  
3 2019 Act the amount of the moneys that are not in the reserve de-  
4 scribed in subsection (1) of this section. In making investments under  
5 this section, the corporation shall:

6 “(a) Identify investment targets and expected returns on invest-  
7 ment with specific reference to the corporation’s financial and opera-  
8 tional needs; and

9 “(b) Favor short-term investments that the corporation can liquify  
10 easily and immediately to the extent necessary to meet the needs of  
11 the corporation.

12 **“SECTION 9. (1) The board of directors of the Oregon Mitigation**  
13 **Bank Corporation may invest the moneys in the Oregon Mitigation**  
14 **Bank Corporation Fund and shall manage the investments that the**  
15 **board of directors makes as a prudent investor would do under the**  
16 **circumstances then prevailing and in light of the purposes, terms,**  
17 **distribution requirements and laws that govern the fund. The board**  
18 **of directors may contract with or delegate authority to another person**  
19 **to invest the moneys or manage the investments if the board of di-**  
20 **rectors requires the other person to invest the moneys or manage the**  
21 **investments in accordance with this section.**

22 “(2) For purposes of this section, investing the moneys of the cor-  
23 poration or managing investments as a prudent investor would do  
24 means that the corporation’s board of directors, or a person with  
25 which the board of directors contracts or to which the board of direc-  
26 tors delegates authority, shall:

27 “(a) Exercise reasonable care, skill, prudence and caution in the  
28 context of each investment;

29 “(b) Manage each investment as part of an overall investment  
30 strategy that incorporates risk and return objectives that are reason-

1 ably suited to the goals of the board of directors;

2 “(c) Favor investments within this state and in entities or insti-  
3 tutions that are subject to the laws of this state;

4 “(d) Refrain from investing if an investment or the source of the  
5 moneys for an investment would put moneys in or from the fund at  
6 substantial risk of loss, diversion or seizure; and

7 “(e) Otherwise invest the moneys in accordance with the require-  
8 ments of law.

9 “(3) The board of directors of the corporation, and any person with  
10 which the board of directors contracts or to which the board of direc-  
11 tors delegates authority to invest the moneys in the fund or manage  
12 the investments that the board of directors makes, has a duty to di-  
13 versify the investments unless diversification is not prudent under the  
14 circumstances. In addition to the duty to diversify investments, the  
15 board of directors or the person:

16 “(a) Has the fiduciary duties of loyalty and impartiality with respect  
17 to the interests of the corporation;

18 “(b) Shall act with prudence in deciding whether and how to dele-  
19 gate authority and in selecting and supervising agents; and

20 “(c) Shall incur only costs that are reasonable in amount and ap-  
21 propriate to the investment responsibilities imposed by law.

22 “(4)(a) Except as provided in paragraph (b) of this subsection, a  
23 member of the board of directors of the corporation, or a person with  
24 which the board of directors has contracted or to which the board of  
25 directors has delegated authority to invest moneys and manage in-  
26 vestments, within three business days after becoming aware that an  
27 investment decision or other matter that is pending before the board  
28 of directors might lead to a private pecuniary benefit or detriment to  
29 the member, the person, a relative of the member or person or to a  
30 business with which the member, the person or the relative is associ-

1 ated, shall notify the board of directors in writing that the member's  
2 or the person's action, decision or recommendation might constitute  
3 an actual or potential conflict of interest.

4 “(b) The requirement under paragraph (a) of this subsection for a  
5 member of the board of directors to notify the board of directors of  
6 an actual or potential conflict of interest does not apply if the  
7 member's pecuniary benefit or detriment arises out of:

8 “(A) An interest or membership in a particular business, industry,  
9 occupation or class that the member must have in order to be a  
10 member of the board of directors;

11 “(B) An action the member would take in the member's official  
12 capacity as a member of the board of directors that would affect to the  
13 same degree a class that consists of all residents of this state or a  
14 smaller class that consists of an industry, occupation or other group  
15 with which the member is associated or with which a relative of the  
16 member is associated; or

17 “(C) Membership in, or membership on the board of directors of, a  
18 nonprofit corporation that is tax exempt under section 501(c) of the  
19 Internal Revenue Code.

20 “(5) A member of the board of directors of the Oregon Mitigation  
21 Bank Corporation shall resolve an actual or potential conflict of in-  
22 terest described in this section in accordance with the procedure set  
23 forth in ORS 244.120.

24 “SECTION 10. (1) The board of directors of the Oregon Mitigation  
25 Bank Corporation shall report to the Secretary of State by March 15  
26 of each year:

27 “(a) The total amount of assets in the Oregon Mitigation Bank  
28 Corporation Fund as of December 31 of the previous year;

29 “(b) The reserves and surplus moneys the board of directors estab-  
30 lished for the fund;

1       “(c) Any moneys in addition to the moneys described in paragraph  
2 (b) of this subsection; and

3       “(d) The total amount of investment gain or loss the fund generated  
4 during the previous year that ended on December 31.

5       “(2) The Secretary of State may conduct an audit of the corporation  
6 and the fund in accordance with ORS 297.210. As part of the audit, the  
7 Secretary of State shall contract with a firm that is qualified to audit  
8 accounts of the type that the corporation maintains.

9       “(3) Not later than the 90th day after the Secretary of State com-  
10 pletes and delivers to the appropriate authority an audit under sub-  
11 section (2) of this section, the corporation shall notify the Secretary  
12 of State in writing of the measures that the corporation or the sub-  
13 sidiary has taken or proposes to take, if any, to respond to the rec-  
14 ommendations in the audit. The Secretary of State may extend the  
15 90-day period for good cause.

16       “(4) This section does not preclude the corporation from conducting  
17 an internal audit or independent audit of the corporation’s operations  
18 or of the fund whenever the corporation’s board of directors deems an  
19 audit necessary or prudent.

20       “SECTION 11. The Oregon Mitigation Bank Corporation, every four  
21 years after the operative date of this section, shall:

22       “(1) Engage at the corporation’s expense an independent public or  
23 private agency, including but not limited to a university, an auditing  
24 firm or another responsible authority with appropriate capability, to  
25 conduct a comprehensive study of the corporation’s operations and  
26 financial condition and the operations and financial condition of any  
27 of the corporation’s subsidiaries. The study, at a minimum, must:

28       “(a) Reconcile the accounting of the Oregon Mitigation Bank Cor-  
29 poration Fund and any subaccounts;

30       “(b) Analyze the investment gains and losses;



1       “(c) Assess the value of the mitigation bank credits and other assets  
2 held by the corporation;

3       “(d) Evaluate the management and operations of the corporation  
4 and the corporation’s subsidiaries in accordance with standards that  
5 would apply to businesses with similar or related purposes, similar size  
6 and scope of operations and other appropriate criteria;

7       “(e) Make recommendations for improvements or remedial meas-  
8 ures necessary to ensure that the corporation fulfills the purposes set  
9 forth under section 2 of this 2019 Act; and

10       “(f) Evaluate, at a minimum, the current utility and need for the  
11 corporation and the corporation’s subsidiaries, the prospects for the  
12 continued financial and operational viability of the corporation and  
13 the corporation’s subsidiaries and the soundness of the financial and  
14 operational management of the corporation and the corporation’s  
15 subsidiaries.

16       “(2) Ensure by contract or agreement that the entity that prepares  
17 the study described in subsection (1) of this section:

18       “(a) Explains in the study the methodology and assumptions the  
19 individual or entity used in preparing the study;

20       “(b) Includes all information necessary to support the conclusions  
21 in the study; and

22       “(c) Provides an executive summary of the study and the conclu-  
23 sions in the study.

24       “(3) Provide, not later than December 31 of the year in which the  
25 corporation commissions the study described in this section, copies of  
26 the study to the President of the Senate, to the Speaker of the House  
27 of Representatives, to each committee of the Legislative Assembly  
28 that is concerned with financial institutions and to the Legislative  
29 Fiscal Officer.

30       “SECTION 12. (1) The Attorney General shall:

1       “(a) Defend a director, officer or employee of the Oregon Mitigation  
2 Bank Corporation against any civil claim or criminal charge brought  
3 or alleged against the director, officer or employee as a consequence  
4 of the director’s, officer’s or employee’s performance of a duty or  
5 function that is in accordance with the purposes set forth for the  
6 corporation in sections 1 to 12 of this 2019 Act and that otherwise  
7 complies with the laws of this state; and

8       “(b) Defend against an in rem proceeding brought to claim any  
9 moneys or property of the corporation or deposited in the Oregon  
10 Mitigation Bank Corporation Fund.

11       “(2) The Attorney General shall provide the defense described in  
12 subsection (1) of this section at no charge to the corporation or to a  
13 director, officer or employee of the corporation and otherwise to the  
14 same extent that the Attorney General defends an agency or  
15 instrumentality of the state that functions or performs duties in ac-  
16 cordance with the laws of this state. The Attorney General shall pay  
17 for the costs of complying with the provisions of this section with  
18 moneys appropriated to the Attorney General for the purposes set  
19 forth in this section.

20       “(3) This section does not apply to an action or charge brought  
21 against the corporation or a director, officer or employee of the cor-  
22 poration for a violation of a law of this state, a failure to carry out a  
23 duty that a law of this state or a bylaw, policy or directive of the  
24 corporation imposes on the director, officer or employee or a violation  
25 of a bylaw, policy or directive of the corporation.

26       “SECTION 13. (1) Sections 1 to 12 of this 2019 Act become operative  
27 January 1, 2020.

28       “(2) Notwithstanding the operative date specified in subsection (1)  
29 of this section, on or after the effective date of this 2019 Act, in order  
30 to prepare the Oregon Mitigation Bank Corporation to begin oper-

1 ations as soon as practicable after the operative date specified in sub-  
2 section (1) of this section and to enable the corporation’s board of  
3 directors to exercise, on and after the operative date specified in sub-  
4 section (1) of this section, all of the duties, powers and functions  
5 conferred on the board of directors by sections 1 to 12 of this 2019 Act:

6 “(a) The Governor may appoint directors to the corporation’s board  
7 of directors on an interim or temporary basis, pending confirmation  
8 by the Senate; and

9 “(b) The board of directors may adopt rules, bylaws or policies that  
10 are necessary to organize the corporation.

11 “(3) The Oregon Department of Administrative Services may adopt  
12 rules and take other actions before the operative date specified in  
13 subsection (1) of this section that are necessary to support the for-  
14 mation and organization of the corporation, to secure the  
15 corporation’s management over any state property to which the de-  
16 partment retains title but which the department allows the corpo-  
17 ration to lease, rent or use and to enable the department, on and after  
18 the operative date specified in subsection (1) of this section, to exercise  
19 the duties, powers and functions conferred on the department by  
20 sections 1 to 12 of this 2019 Act.

21 “SECTION 14. In addition to and not in lieu of any other appropri-  
22 ation, there is appropriated to the Oregon Mitigation Bank Corpo-  
23 ration, for the biennium beginning July 1, 2019, out of the General  
24 Fund, the amount of \$\_\_\_\_\_ for deposit into the Oregon Miti-  
25 gation Bank Corporation Fund established under section 7 of this 2019  
26 Act.

27 “SECTION 15. This 2019 Act being necessary for the immediate  
28 preservation of the public peace, health and safety, an emergency is  
29 declared to exist, and this 2019 Act takes effect on its passage.”.

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