

HOUSE AMENDMENTS TO HOUSE BILL 4122

By COMMITTEE ON CONSUMER PROTECTION AND GOVERNMENT EFFICIENCY

February 14

1 On page 1 of the printed bill, delete lines 6 through 26 and delete page 2.

2 On page 3, delete lines 1 through 8 and insert:

3 **“SECTION 2. (1) As used in this section:**

4 **“(a)(A) ‘Information technology initiative’ means a procurement or a set of related pro-**
5 **urements that requires a state contracting agency or a public corporation to seek and ob-**
6 **tain, from an authority other than the state contracting agency or the public corporation,**
7 **initial or additional funding or appropriations, an increase in an expenditure limitation, new**
8 **or expanded authority to issue bonds or certificates of participation or other budgetary au-**
9 **thority in order to purchase, lease, rent or otherwise acquire:**

10 **“(i) New hardware, software or services for data processing, office automation or tele-**
11 **communications;**

12 **“(ii) An overhaul, upgrade or replacement of a substantial portion of the hardware or**
13 **software in an existing data processing, office automation or telecommunications system;**
14 **or**

15 **“(iii) A substantial expansion of existing data processing, office automation or telecom-**
16 **munications services.**

17 **“(B) ‘Information technology initiative’ does not include:**

18 **“(i) A procurement for preliminary quality assurance services or quality management**
19 **services;**

20 **“(ii) A routine update to or purchase of hardware or software within an existing data**
21 **processing, office automation or telecommunications system;**

22 **“(iii) A renewal of an existing contract for data processing, office automation or tele-**
23 **communications services under terms and conditions that are substantially the same as in**
24 **the existing contract; or**

25 **“(iv) A replacement of a component of an existing data processing, office automation or**
26 **telecommunications system that is not essential for the system to function as designed or**
27 **that occurs at the end of the component’s anticipated life cycle.**

28 **“(b) ‘Preliminary quality assurance services’ means a set of services in which a con-**
29 **tractor provides an independent and objective review of a state contracting agency’s or a**
30 **public corporation’s plans, specifications, estimates, documentation, available resources and**
31 **overall purpose for an information technology initiative, including services in which the**
32 **contractor evaluates a proposed information technology initiative against applicable quality**
33 **standards and best practices from private industry and other sources.**

34 **“(c)(A) ‘Public corporation’ means a corporation:**

35 **“(i) The operations of which are subject to control by this state or by an agency or**

1 instrumentality of this state, or by officers of this state or of an agency or instrumentality
2 of this state;

3 “(ii) That is organized, at least in part, to serve a public purpose; and

4 “(iii) That receives public funds or other support from an entity described in sub-
5 subparagraph (i) of this subparagraph.

6 “(B) ‘Public corporation’ does not include:

7 “(i) A person or entity described in ORS 174.108 (3);

8 “(ii) A city, county, local service district, school district, education service district,
9 community college district or community college service district or a university with a gov-
10 erning board listed in ORS 352.054; or

11 “(iii) An administrative subdivision of an entity described in sub-subparagraph (ii) of this
12 subparagraph.

13 “(d) ‘Quality management services’ means a set of services in which a contractor pro-
14 vides an independent and objective review and evaluation of another contractor’s perform-
15 ance to determine whether the other contractor satisfies the goals and meets the
16 specifications for an information technology initiative that a state contracting agency or a
17 public corporation sets forth in the state contracting agency’s or public corporation’s solici-
18 tation documents, contracts, statements of work or related documents and includes, but is
19 not limited to, services in which the contractor:

20 “(A) Identifies quality standards that apply or should apply to an information technology
21 initiative;

22 “(B) Suggests methods and means by which the other contractor may meet quality
23 standards identified in subparagraph (A) of this paragraph;

24 “(C) Reviews and evaluates the other contractor’s performance regularly as the other
25 contractor provides the hardware, software or services for an information technology initi-
26 ative;

27 “(D) Identifies omissions or gaps in the other contractor’s planning, execution, control,
28 methodology, communication or reporting as the other contractor provides or prepares to
29 provide the hardware, software or services for an information technology initiative;

30 “(E) Identifies risks in the other contractor’s plans or approach to providing the hard-
31 ware, software or services for an information technology initiative and suggests methods to
32 reduce, mitigate or eliminate the risks;

33 “(F) Assists the state contracting agency or the public corporation in testing or other-
34 wise evaluating the hardware, software or services the other contractor provides for an in-
35 formation technology initiative to determine whether the hardware, software or services
36 conform with the quality standards identified under subparagraph (A) of this paragraph;

37 “(G) Advises the state contracting agency or public corporation as to whether the state
38 contracting agency or public corporation should accept the hardware, software or services
39 as conforming to the quality standards identified in subparagraph (A) of this paragraph or
40 as otherwise meeting the state contracting agency’s or public corporation’s needs, specifi-
41 cations or expectations; and

42 “(H) Identifies unsatisfactory performance and suggests methods the other contractor
43 might use to eliminate the causes of unsatisfactory performance.

44 “(2)(a) A state contracting agency or public corporation that implements an information
45 technology initiative shall, in a separate procurement, obtain quality management services

1 from a qualified contractor if the value of the information technology initiative exceeds \$5
2 million or if the information technology initiative meets any three or more of the following
3 criteria:

4 “(A) Any subcontract or the entire contract price for the information technology initi-
5 ative exceeds \$1 million;

6 “(B) The hardware, software or services for the information technology initiative must
7 operate without failure during the state contracting agency’s or public corporation’s normal
8 business hours;

9 “(C) The contractor that provides the hardware, software or services for the information
10 technology initiative will require more than one year to do so;

11 “(D) More than one state contracting agency or public corporation will use or have re-
12 sponsibility for managing or maintaining the hardware, software or services acquired in an
13 information technology initiative;

14 “(E) The state contracting agency or public corporation cannot provide sufficient quality
15 management services for the information technology initiative with the state contracting
16 agency’s or public corporation’s own personnel or resources because the information tech-
17 nology initiative is too complex; or

18 “(F) The information technology initiative meets other criteria that the State Chief In-
19 formation Officer by rule defines as requiring a state contracting agency or public corpo-
20 ration to procure quality management services.

21 “(b) A state contracting agency or public corporation may, subject to ORS 279B.040,
22 procure preliminary quality assurance services from a contractor if the information tech-
23 nology initiative meets the standards set forth in paragraph (a) of this subsection or if the
24 state contracting agency or public corporation otherwise believes that the preliminary qual-
25 ity assurance services will enable the contracting agency or public corporation to implement
26 an information technology initiative successfully.

27 “(3) A state contracting agency or public corporation may not artificially divide or frag-
28 ment an information technology initiative so as to avoid the application of this section.

29 “(4)(a) Notwithstanding any procurement authority that a state contracting agency or a
30 public corporation has that is not subject to the authority of the Director of the Oregon
31 Department of Administrative Services under ORS 279A.050 (2) or (7), the state contracting
32 agency or public corporation is subject to the provisions of subsection (2) of this section and
33 shall consult with the director and follow the policies and procedures of the Oregon Depart-
34 ment of Administrative Services to determine the extent of preliminary quality assurance
35 services or quality management services that the state contracting agency or public corpo-
36 ration will require for an information technology initiative.

37 “(b) Notwithstanding the Oregon Health Authority’s exemption in ORS 279A.050 (7) from
38 the authority that the Oregon Department of Administrative Services has over all state
39 agency information technology contracts, the Oregon Health Authority shall consult with the
40 Director of the Oregon Department of Administrative Services and follow the policies and
41 procedures of the Oregon Department of Administrative Services to determine the extent
42 of preliminary quality assurance services or quality management services that the Oregon
43 Health Authority will require for an information technology initiative.

44 “(5)(a) If a state contracting agency or public corporation awards a contract for quality
45 management services, the contract must provide that at the same time a contractor provides

1 a written report to the contract administrator, the contractor shall also provide a copy of
2 the report to:

3 “(A) The State Chief Information Officer;

4 “(B) The Director of the Oregon Department of Administrative Services; and

5 “(C) As appropriate for the specific information technology procurement, to:

6 “(i) The director of the state contracting agency or, if a board or commission sets policy
7 for the state contracting agency, to the board or commission; or

8 “(ii) The governing body of the public corporation.

9 “(b) The state contracting agency or public corporation shall provide the contractor with
10 names, addresses and other contact information the contractor needs to comply with para-
11 graph (a) of this subsection.”.

12 On page 4, line 15, delete “procurement” and insert “information technology initiative”.

13 In line 23, after the period insert “If the contracting agency determines that a bidder or
14 proposer is not responsible, the contracting agency shall provide the bidder or proposer with written
15 notice of the contracting agency’s determination.”.

16 Delete line 45.

17 On page 5, delete lines 1 through 4 and insert:

18 “(e) Complied with the tax laws of this state or a political subdivision of this state, including
19 ORS 305.620 and ORS chapters 316, 317 and 318. The bidder or proposer shall demonstrate compli-
20 ance by submitting a signed affidavit that attests, under penalty of perjury, that the bidder or
21 proposer has complied with the tax laws of this state or a political subdivision of this state.”.