

By the Committee on Comprehensive Planning, Local and Military Affairs; and Senators Posey and Klein

316-1794-01

1                                   A bill to be entitled  
2           An act relating to governmental data  
3           processing; creating s. 119.084, F.S.;  
4           providing definitions; authorizing governmental  
5           agencies to acquire, hold, and enforce  
6           copyrights for data processing software they  
7           create; authorizing sale or license of such  
8           software; authorizing establishment of sales  
9           price and licensing fee; providing requirements  
10          for electronic recordkeeping systems; providing  
11          for access to public records maintained in  
12          electronic recordkeeping systems; providing for  
13          fees to be charged for copying public records  
14          maintained in electronic recordkeeping systems;  
15          prohibiting contracts for public records  
16          databases that impair public access to public  
17          records; providing for future review and  
18          repeal; providing a finding of public  
19          necessity; providing an effective date.

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21 Be It Enacted by the Legislature of the State of Florida:

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23           Section 1. Section 119.084, Florida Statutes, is  
24 created to read:

25           119.084 Definitions; copyright of data processing  
26 software created by governmental agencies; sale price and  
27 licensing fee; access to public records; prohibited  
28 contracts.--

29           (1) As used in this section:

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1           (a) "Agency" has the same meaning as in s. 119.011(2),  
2 except that the term does not include any private agency,  
3 person, partnership, corporation, or business entity.

4           (b) "Data processing software" has the same meaning as  
5 in s. 282.303.

6           (c) "Proprietary software" means data processing  
7 software that is protected by copyright or trade secret laws.

8           (2) Any agency is authorized to acquire and hold  
9 copyrights for data processing software created by the agency  
10 and to enforce its rights pertaining to such copyrights,  
11 provided that the agency complies with the requirements of  
12 this section.

13           (a) Any agency that has acquired a copyright for data  
14 processing software created by the agency may sell or license  
15 the copyrighted data processing software to any public agency  
16 or private person and may establish a price for the sale and a  
17 license fee for the use of such data processing software.  
18 Proceeds from the sale or licensing of copyrighted data  
19 processing software shall be deposited by the agency into a  
20 trust fund for the agency's appropriate use for authorized  
21 purposes. Counties, municipalities, and other political  
22 subdivisions of the state may designate how such sale and  
23 licensing proceeds are to be used. The price for the sale of  
24 and the fee for the licensing of copyrighted data processing  
25 software may be based on market considerations. However, the  
26 prices or fees for the sale or licensing of copyrighted data  
27 processing software to an individual or entity solely for  
28 application to information maintained or generated by the  
29 agency that created the copyrighted data processing software  
30 shall be determined pursuant to s. 119.07(1).

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1           **(b) The provisions of this subsection are supplemental**  
2 **to, and shall not supplant or repeal, any other provision of**  
3 **law that authorizes an agency to acquire and hold copyrights.**

4           **(3) Subject to the restrictions of copyright and trade**  
5 **secret laws and public records exemptions, agency use of**  
6 **proprietary software must not diminish the right of the public**  
7 **to inspect and copy a public record.**

8           **(4) An agency must consider when designing or**  
9 **acquiring an electronic recordkeeping system that such system**  
10 **is capable of providing data in some common format such as,**  
11 **but not limited to, the American Standard Code for Information**  
12 **Interchange.**

13           **(5) Each agency that maintains a public record in an**  
14 **electronic recordkeeping system shall provide to any person,**  
15 **pursuant to this chapter, a copy of any public record in that**  
16 **system which is not exempted by law from public disclosure.**  
17 **An agency must provide a copy of the record in the medium**  
18 **requested if the agency maintains the record in that medium,**  
19 **and the agency may charge a fee which shall be in accordance**  
20 **with this chapter. For the purpose of satisfying a public**  
21 **records request, the fee to be charged by an agency if it**  
22 **elects to provide a copy of a public record in a medium not**  
23 **routinely used by the agency, or if it elects to compile**  
24 **information not routinely developed or maintained by the**  
25 **agency or that requires a substantial amount of manipulation**  
26 **or programming, must be in accordance with s. 119.07(1)(b).**

27           **(6) An agency may not enter into a contract for the**  
28 **creation or maintenance of a public records database if that**  
29 **contract impairs the ability of the public to inspect or copy**  
30 **the public records of that agency, including public records**  
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1 that are on-line or stored in an electronic recordkeeping  
2 system used by the agency.

3 (7) This section is subject to the Open Government  
4 Sunset Review Act of 1995 in accordance with s. 119.15 and  
5 shall stand repealed on October 2, 2006, unless reviewed and  
6 saved from repeal through reenactment by the Legislature.

7 Section 2. The Legislature finds that it is a public  
8 necessity to permit governmental agencies to acquire, hold,  
9 and enforce copyrights for data processing software created by  
10 the agency. Allowing agencies to copyright their software  
11 enables agencies to sell or license the software at a fair  
12 market value to public agencies or private persons and recoup  
13 production expenses. Governmental agencies spend valuable  
14 public resources on developing and creating software to  
15 enhance system productivity. Currently there is no protection  
16 from any person obtaining software created by an agency at the  
17 expense of taxpayers and using that software without  
18 restriction for personal or financial gain. This exemption is  
19 needed to protect the integrity and development of computer  
20 technology design created by governmental agencies by  
21 restricting the use of the software for commercial purposes.  
22 The Legislature also finds that this exemption protects the  
23 public by ensuring that access to electronic public records is  
24 not prohibited. Thus, the public benefit in copyrighting  
25 governmental software significantly outweighs any public or  
26 private harm because the use of this information without the  
27 necessary restrictions adversely impacts governmental  
28 agencies' proprietary rights.

29 Section 3. This act shall take effect upon becoming a  
30 law.

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STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN  
COMMITTEE SUBSTITUTE FOR  
SB 2220

This CS includes the substance of the bill as filed and provides definitions; expands the scope of the bill to include "agencies" (which includes the state, counties, cities, districts, commissions, etc.) instead of only local governments; a repeal date of 10/02/06, and a statement of public necessity.