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.
20
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" means the programs and
5   routines used to employ and control the capabilities of data
6   processing hardware, including, but not limited to, operating
7   systems, compilers, assemblers, utilities, library routines,
8   maintenance routines, applications, and computer networking
9   programs.
10   (c) "Proprietary software" means data processing
11 software that is protected by copyright or trade secret laws.
12   (2) Any agency is authorized to acquire and hold
13 copyrights for data processing software created by the agency
14 and to enforce its rights pertaining to such copyrights,
15 provided that the agency complies with the requirements of
16 this section.
17   (a) Any agency that has acquired a copyright for data
18 processing software created by the agency may sell or license
19 the copyrighted data processing software to any public agency
20 or private person and may establish a price for the sale and a
21 license fee for the use of such data processing software.
22 Proceeds from the sale or licensing of copyrighted data
23 processing software shall be deposited by the agency into a
24 trust fund for the agency's appropriate use for authorized
25 purposes. Counties, municipalities, and other political
26 subdivisions of the state may designate how such sale and
27 licensing proceeds are to be used. The price for the sale of
28 and the fee for the licensing of copyrighted data processing
29 software may be based on market considerations. However, the
30 prices or fees for the sale or licensing of copyrighted data
31 processing software to an individual or entity solely for

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1 application to information maintained or generated by the
2 agency that created the copyrighted data processing software
3 shall be determined pursuant to s. 119.07(1).
4   (b) The provisions of this subsection are supplemental
5 to, and shall not supplant or repeal, any other provision of
6 law that authorizes an agency to acquire and hold copyrights.
7   (3) Subject to the restrictions of copyright and trade
8 secret laws and public records exemptions, agency use of
9 proprietary software must not diminish the right of the public
10 to inspect and copy a public record.
11   (4) An agency must consider when designing or
12 acquiring an electronic recordkeeping system that such system
13 is capable of providing data in some common format such as,
14 but not limited to, the American Standard Code for Information
15 Interchange.
16   (5) Each agency that maintains a public record in an
17 electronic recordkeeping system shall provide to any person,
18 pursuant to this chapter, a copy of any public record in that
19 system which is not exempted by law from public disclosure.
20 An agency must provide a copy of the record in the medium
21 requested if the agency maintains the record in that medium,
22 and the agency may charge a fee which shall be in accordance
23 with this chapter. For the purpose of satisfying a public
24 records request, the fee to be charged by an agency if it
25 elects to provide a copy of a public record in a medium not
26 routinely used by the agency, or if it elects to compile
27 information not routinely developed or maintained by the
28 agency or that requires a substantial amount of manipulation
29 or programming, must be in accordance with s. 119.07(1)(b).
30   (6) An agency may not enter into a contract for the
31 creation or maintenance of a public records database if that

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 1 contract impairs the ability of the public to inspect or copy
 2 the public records of that agency, including public records
 3 that are on-line or stored in an electronic recordkeeping
 4 system used by the agency.
 5   (7) This section is subject to the Open Government
 6 Sunset Review Act of 1995 in accordance with s. 119.15 and
 7 shall stand repealed on October 2, 2006, unless reviewed and
 8 saved from repeal through reenactment by the Legislature.
 9   Section 2. The Legislature finds that it is a public
10 necessity to permit governmental agencies to acquire, hold,
11 and enforce copyrights for data processing software created by
12 the agency. Allowing agencies to copyright their software
13 enables agencies to sell or license the software at a fair
14 market value to public agencies or private persons and recoup
15 production expenses. Governmental agencies spend valuable
16 public resources on developing and creating software to
17 enhance system productivity. Currently there is no protection
18 from any person obtaining software created by an agency at the
19 expense of taxpayers and using that software without
20 restriction for personal or financial gain. This exemption is
21 needed to protect the integrity and development of computer
22 technology design created by governmental agencies by
23 restricting the use of the software for commercial purposes.
24 The Legislature also finds that this exemption protects the
25 public by ensuring that access to electronic public records is
26 not prohibited. Thus, the public benefit in copyrighting
27 governmental software significantly outweighs any public or
28 private harm because the use of this information without the
29 necessary restrictions adversely impacts governmental
30 agencies' proprietary rights.
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1 | Section 3. This act shall take effect upon becoming a
2 | law.
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