

By the Committee on Information Technology and
Representative Mealor

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 for adoption of rules;
20 providing an effective date.

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22 Be It Enacted by the Legislature of the State of Florida:
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24 Section 1. Section 119.084, Florida Statutes, is
25 created to read:
26 119.084 Definitions; copyright of data processing
27 software created by governmental agencies; sale price and
28 licensing fee; access to public records; prohibited
29 contracts.--

30 (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. Exclusive authority to adopt such policies
30 and rules as are necessary to implement the authority this act
31 confers on agencies other than private agencies,

1 municipalities, counties, and other political subdivisions of
2 the state is delegated to the State Technology Office.

3 Section 4. This act shall take effect upon becoming a
4 law.

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