

Republic of the Philippines
HOUSE OF REPRESENTATIVES
Quezon City

THIRTEENTH CONGRESS
Third Regular Session

HOUSE BILL NO. _____

Introduced by **Representative Teodoro A. Casiño**

AN ACT
DEFINING THE PROCUREMENT OF SOFTWARE AND SOFTWARE LICENSES
IN GOVERNMENT AGENCIES, PROMOTING THE DEVELOPMENT, AND USE
OF FREE/OPEN SOURCE SOFTWARE (FOSS), DECLARING ILLEGAL THE
PATENTING OF KNOWN FOSS AND STANDARDS OR ANY OF THEIR
DERIVATIVES THEREBY AMENDING SECTION 22 OF RA 8293 OTHERWISE
KNOWN AS THE INTELLECTUAL PROPERTY CODE OF THE PHILIPPINES,
AND FOR OTHER PURPOSES

Be it enacted by the Senate and House of Representatives of the Philippines in Congress assembled:

SECTION 1. *Short Title* – This Act shall be known as the “*Free/Open Source Software (FOSS) Act of 2006*”.

SECTION 2. *Declaration of Policy* - *Recognizing* the wide discrepancy between the technologies of developing countries and advanced countries, *further recognizing* the economic limitations in the information technology (IT) of developing countries, especially on the viability of purchasing and implementing expensive software solutions, and *further recognizing* the relatively slow diffusion of technology between the advanced countries and industrializing countries; do hereby declare a policy of the state to:

- 2.1.promote the preferential use of domestic material and Filipino labor in information communications technology, in accordance to Art XII, Sec. 12 of the Constitution;
- 2.2.adoption of a mechanisms to ensure fiscal discipline in the purchase of software, without compromising the state’s security and the stability and robustness of the country’s ICT infrastructure; and,
- 2.3.Develop Filipino professionals and scientists in the field of software technology and ICT by promoting the use and purchase of free/open source software for state use, in accordance to Article XII, Sec. 14 of the Constitution.

SECTION 3. *Definition of Terms* – as used in this bill, the following terms and phrases shall mean:

FOSS License – any license and/or end user agreement that ensures free access and redistribution to free open source software; such licenses are generally approved by an internationally renowned FOSS advocate body such as the Open Source Initiative (OSI).

Open standards – standards, protocols or specifications for systems that are publicly available and affirmed by a standards body.

In the absence of authentication or affirmation by an internationally recognized standards body, open standards shall mean all protocols, standards and specifications that are publicly available, are widely used, are interoperable and are scalable.

Source code –the set of human readable instructions and statements written by the programmer using a particular programming language, including the modules, components of the executable program, and any interface definition files and scripts used to compile and install program.

Compile – the translation of a source code into an object code, that is, the executable program which can be used by a user using an appropriate operating system. In some programming languages, different object codes may be needed to link each other to form the executable program.

Programming language – any program used to interpret machine codes into human readable text format used by programmers to form a program.

Interoperability –the ability of information systems to operate in conjunction with each other encompassing protocols, hardware software, application, and data compatibility layers. In particular, it is the ability of different types of computers, networks, operating systems, and applications to work together effectively, without prior communication, in order to exchange information in a useful and meaningful manner.

Scalability – the ease of a particular system or component to fit in a particular area without need to replace much of existing system hardware; it shall also mean the ability of a particular system or its components to accommodate upgrades and future needs.

TCO – abbreviation for Total Cost of Ownership, which covers all the costs involved in a technology or business solution, including the initial investment cost and maintenance, support, replacement, training and upgrade costs.

ICT – Information and Communications Technology

Government – includes the three separate branches of government and all departments, bureaus, offices and agencies operating under each separate branch of government, including government-owned and-controlled corporations.

CICT – the Commission on Information and Communications Technology

Higher Educational Institutions (HEI) – public or private institutions whose main objective for existing is to provide tertiary education whether vocational, baccalaureate or post-baccalaureate degrees including professional and skills certification short courses.

SECTION 4. *Free/Open Source Software (FOSS) so defined* – Free/Open Source Software (FOSS) are software that meets all of the following criteria:

- 4.1. the source code of the software, including the source code for such other parts and components the needed to compile and install the software shall be readily available and accessible;
- 4.2. The license to use the program does not restrict, nor require such other fees such as royalties, from anyone to redistribute, in any way it sees fit, the program as part of an aggregate software distribution or solution containing other programs from several other sources;
- 4.3. The license must allow modifications and derived works which, as specified in Section 4.2 of this Act, must allow for redistribution without additional charges;
- 4.4. The license to use must not discriminate against persons or group of persons nor must not discriminate against individuals by their field of endeavor;
- 4.5. Licenses may restrict the distribution of “modified source codes” only if the source code allows for “patches” to be implemented during build time. However, licenses must explicitly state that it allows for redistribution of the modified software and access to the original source code is still made available;
- 4.6. The license of the program shall not be restricted to it being part of a particular software distribution, hence, individual components of an aggregate solution can be modified and redistributed in accordance to Sections 4.2 and 4.3 of this Act;
- 4.7. Software’s license must not restrict other software from being used as part or in cooperation with the FOSS. Hence, licenses open source software can be used in conjuncture with proprietary software; and,
- 4.8. The license must be technology neutral. No restrictions should be placed regarding the use of the software in any platform. In case it is found that the software does not efficiently work on a particular platform, the software developer of the open source technology must address the interoperability issues post haste without extra charges;

SECTION 5. *Legal Recognition of FOSS* – The government shall recognize the validity and legitimacy of FOSS and FOSS licenses, subject to the provisions of existing laws, rules and regulations.

SECTION 6. *Government Rules and Policies on the Use and Adoption of FOSS and Open Standards in Government*

6.1. ***Use of open standards*** – The Government shall only use ICT goods and services that are, support and / or interoperable with open standards, protocols or specifications.

6.2. ***Use of FOSS*** – The government shall apply only FOSS or FOSS solutions, as defined in section 4 of this Act, in all ICT projects and activities;

6.3. ***Extraordinary circumstances*** – There may be extraordinary circumstances which may render the use of FOSS and Open Standards almost impossible for government use. They may include but are not limited to:

6.3.1 where there is no reasonably available ICT good or services supporting open standards in the field, area or activity that the Government intends to enter or participate; or,

6.3.2 Where a particular government agency or office has existing, widely-used and widely implemented proprietary ICT system and there are no reasonably available technology using open standards that can be used with the said proprietary system.

6.4. ***Limitations of Proprietary Software and Standards in Government Use*** – Should there exist extraordinary circumstances as enumerated in Section 6.3, the government may use proprietary standards and software subject to the following conditions:

6.4.1 The state shall procure, purchase or acquire software that offers license most similar to FOSS as defined in Section 4 of this Act;

6.4.2 Open standards and FOSS will be selected and given preference when existing systems are to be retired or need major enhancements; and,

6.4.3 Basic upgrade and software patches will be provided by the vendor to the state free of charge;

SECTION 7. Provision against single vendor lock-in and dependence – Under no circumstances are ICT goods and services to be acquired by the State restricted for use in a single vendor environment only. All prospective ICT investments of the government shall comply with open standards, and existing ICT systems will be reviewed for open standards compatibility and will be enhanced to achieve open standards compatibility when appropriate.

SECTION 8. Right to Derivatives and the Control and Modification Software – In any circumstances, Government shall obtain full rights and control over derivatives, modifications and customizations of software that it uses or adopts.

SECTION 9. *Preference in procurement of ICT services and goods* – In case the Total Cost of Ownership (TCO) of an FOSS or implementing an open standard system is equal to or slightly higher than that of a proprietary system, the Government shall give preference to FOSS and open standards, ***provided further*** that in case there is more than one company that offers FOSS and open standard solutions to the government with almost equal TCO, preference shall be given to the Filipino-owned ICT Company.

SECTION 10. *Promotion of FOSS and open standards in Higher Educational Institutions (HEIs)* –

10.1. The government, through the Commission on Higher Education (CHED), the National Computing Center (NCC), the Department of Science and Technology (DOST), and any other government office, shall promote the awareness of Filipinos in free/open source software by providing laboratories; organizing competitions; encouraging research, thesis and dissertations on free/open source software development and the development of open standards;

10.2. Within eighteen (18) months after this Act takes effect, the Department of Education, the Department of Science and Technology, the Commission on Higher Education, and the University of the Philippines shall jointly formulate and implement a curriculum for students' training in the use and development of free/open source software both in secondary and tertiary education. They will also formulate a basic government retraining and certification program for existing IT professionals to test their proficiencies and skills in implementing FOSS solutions.

10.3. It shall be unlawful for any HEI to offer, as part of its curriculum, a certification program training students to become professionals on the use and implementation of proprietary software and solutions if it does not offer, also as part of its curriculum, a similar certification program for FOSS, open systems and standards.

SECTION 11. *Amending Section 22 of RA 8293, otherwise known as the "Intellectual Property Code of the Philippines"* –

Sec. 22 RA 8293 otherwise known as the *Intellectual Property Code* of the Philippines is hereby amended to read as follows:

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Section 22. Non-Patentable Inventions. – The following shall be excluded from patent protection

22.1. Discoveries, scientific theories and mathematical methods;

22.2. Schemes, rules and methods of performing mental acts, playing games or doing business, and programs for computers;

22.3. Methods for treatment of the human or animal body by surgery or therapy and diagnostic methods practiced on the human or animal body. This provision shall not apply to products and composition for use in any of these methods;

22.4. Plant varieties or animal breeds or essentially biological processes for the production of plants or animals. This provision shall not apply to micro-organisms and non-biological and microbiological processes.

Provisions under this subsection shall not preclude Congress to consider the enactment of a law providing sui generis protection of plant varieties and animal breeds and a system of community intellectual rights protection:

22.5. Aesthetic creations; ~~and~~

22.6. Anything which is contrary to public order or morality, AND

22.7 ANY STANDARD, PROTOCOL, SPECIFICATION, AND COMPUTER PROGRAM / SOFTWARE, WHICH HAD GENERALLY BEEN KNOWN AS FREE/OPEN SOURCE SOFTWARE OR FORM PART OF EXISTING OPEN STANDARDS, OR ANY OF THEIR DERIVATIVES.

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SECTION 12. *Implementation* – The CICT shall be the main government agency to oversee the implementation of this Act, within eighteen (18) months after this Act takes effect the CICT shall:

12.1. Submit to the Office of the President and to Congress a copy of its audit of all government's existing ICT systems, and its recommendations as to system migration and changes needed to fulfill the objectives of this Act;

12.2. Be ready with the implementing rules and regulations for this Act which shall include as minimum the following:

12.2.1. Within three years, 85% of all existing government systems shall be open standards compliant and employs FOSS;

12.2.2. Within three years, 90% of government IT professionals, and 65% of the country's IT professionals, must be proficient in the implementation of FOSS systems; and,

12.2.3. The development of an FOSS community in the Philippines that will help in the development and advocacy of FOSS.

SECTION 13. *Penalties* –

13.1. Any act, or omission, on the part of any public official(s) and/or individuals acting in conspiracy with public officials violating provisions of this Act shall be penalized in accordance with pertinent provision(s) of RA 3019, otherwise known as *The Anti-Graft and Corrupt Practices Act* as amended.

13.2. The Commission on Higher Education (CHED) and/or the courts, whichever is applicable, shall penalize HEIs found violating Section 10.3 of this Act on the following schedule:

(a) **“First Offense”** – A fine of not less than ten thousand pesos (P10,000.00) but no more than fifty thousand pesos (P50,000.00);

(b) **“Second Offense”** – A fine of not less than fifty thousand pesos (P50,000.00) but no more than one hundred thousand pesos (P100,000.00), revocation of license to offer the course for which the curriculum was offered and/or imprisonment of the school officials responsible of not less than six (6) months but no more than eighteen (24) months in the discretion of the courts; and,

(c) **“Third Offense”** – A fine of not less than one hundred thousand pesos (P100,000.00) but no more than two hundred one thousand pesos (P201,000.00), revocation of license for the school to operate, and / or imprisonment of the school officials of not less than twenty-four (24) months but no more than forty-eight (48) months in the discretion of the courts;

SECTION 14. *Repealing Clause* – Section 22 of RA 8293 otherwise known as the “Intellectual Property code of the Philippines” is hereby amended in accordance to Section 11 of this Act.

All other laws, presidential decrees, executive orders and rules and regulations, or parts thereof, inconsistent with the provisions of this Act are hereby repealed, modified, or amended accordingly.

SECTION 15. *Separability Clause* – if any section or provision of this Article is held unconstitutional or invalid, the validity of other sections herein shall not be affected thereby.

SECTION 16. *Effectivity* – this Act shall take effect fifteen (15) days after its publication in the *Official Gazette* or in at least two (2) newspapers of general circulation.

Approved.