

Republic of the Philippines
HOUSE OF REPRESENTATIVES
Quezon City

THIRTEENTH CONGRESS
Third Regular Session

HOUSE BILL NO. 5769

Introduced by **Representative Teodoro A. Casiño**

EXPLANATORY NOTE

A spectre is haunting the global software giants – the spectre of Free/Open Source Software (FOSS).

Once considered the realm of geeks, computer experts and cyberspace activists, FOSS is now steadily gaining ground among a broad range of information and communications technology (ICT) consumers – from home users and barangay schools to large corporate enterprises – who are looking for alternatives to the expensive, overbearing and restrictive products of proprietary software monopolies like Microsoft[®], Sun[®], CISCO[®] and Adobe[®], among others.

Unlike proprietary software, FOSS is **cheap** (in fact, many FOSS are free, downloadable on the internet and can be freely distributed), **flexible and development-friendly** (FOSS source codes are accessible to consumers who may study, modify and customize the software), **interoperable** (FOSS adhere to open standards and are meant to work across various platforms and protocols) and **safe** (the opening of the source codes and the use of open standards have allowed hundreds of thousands of users around the globe to serve as a virtual research and development team, providing patches and solutions to bugs and glitches in real time over the internet).

Today, for every proprietary software available for a niche of the population, an equivalent FOSS which is cheaper, safer and more robust is available. This is why the use of FOSS is steadily gaining ground in many countries in Europe, North America, Latin America and Asia.

The most apparent benefit of FOSS is its low cost. Giant chip maker Intel[®] reportedly saved \$200 million for switching their servers from proprietary UNIX[®] software to open GNU/Linux software, while Amazon reported a US\$17 million savings for migrating from Microsoft to GNU/Linux.

Many organizations and several studies have shown that using FOSS in lieu of proprietary software results in significant cost savings of anywhere from 15% to 35% not only due to lower licensing costs but lower personnel and hardware costs.

A study produced by the International Open Source Network (IOSN) and United Nations Development Program – Asia-Pacific Development Information Programme have identified the following strategic benefits of FOSS: (1) Developing local capacity/industry; (2) Reducing imports/conserving foreign exchange; (3) Enhancing national security; (4) Reducing copyright infringements; (5) Enabling localization.

The study also identified economic benefits as: (1) Increasing competition; (2) Reducing total cost of ownership; (3) Enhancing security; (4) Achieving vendor independence.

Add to this the social benefit of increasing access to information.

In fact, the viability and advantages of FOSS has not been lost on us Filipinos. The Advanced Science and Technology Institute of the Department of Science and Technology (ASTI-DOST) has developed the Bayanihan Linux 4, a complete open source-based desktop solution for office and school use, and Bayanihan Linux Server 2006, an easy-to-use Linux server for government agencies, schools and SMEs. These Bayanihan Linux programs can do everything that Microsoft Windows can do, except drain one's pockets. In the first place, Bayanihan Linux is free.

Exist, a 100%-owned Filipino open-source software company, was recently awarded the prestigious Red Herring award for the top 100 start-up technology companies. This is proof that given the opportunity and proper support, Filipino companies can be a major supplier in the growing global FOSS market.

This bill, which mandates the use of FOSS in all government agencies and which encourages the use and development of FOSS in the private and public sectors, will benefit the Philippines by: (1) Lowering the overall cost of ICT in the public and private sectors by reducing the country's dependence on proprietary software and computer applications; (2) Making IT more accessible to a greater number of users; (3) Reducing software piracy; (4) Unlocking the potential and encouraging the development of a genuinely Filipino IT industry; (5) Providing greater security for highly sensitive government and private information systems.

IN VIEW OF THE FOREGOING, passage of the bill is earnestly urged.

(sgd) **REP. TEODORO A. CASIÑO**
Party-list Bayan Muna

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HOUSE BILL NO. 5769

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AN ACT
PROMOTING THE DEVELOPMENT AND USE OF FREE/OPEN SOURCE
SOFTWARE (FOSS) IN THE PHILIPPINES, AMENDING RA 3019 OTHERWISE
KNOWN AS THE “INTELLECTUAL PROPERTY CODE OF THE PHILIPPINES”,
PROVIDING PENALTIES THEREOF, 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; *realizing* the economic limitations in the information technology (IT) of developing countries, especially on the viability of purchasing and implementing expensive software solutions; *aware* of the relatively slow diffusion of technology between the developed and developing countries; it is hereby declared a policy of the State to:

- 2.1. Promote the preferential use of domestic material and Filipino labor in information communications technology, in accordance with Art XII, Sec. 12 of the Constitution;
- 2.2. Adopt 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, 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, are affirmed by a standards body and whose implementation does not require any fee or royalties;

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, are scalable, and whose implementation does not require any fee or royalties.

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 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.

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

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.

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 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 fees such as royalties from anyone to redistribute, in any way, 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 nor a specific group of persons;
- 4.5. 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;
- 4.6. A software license must not restrict other software from being used as part or in cooperation with the FOSS. Hence, the license of the open source software can be used in conjuncture with proprietary software; and,
- 4.7. 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 use only ICT goods and services that are, support, and are interoperable with open standards, protocols and 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*** – The following are extraordinary circumstances which may exempt government from using FOSS and open standards:
 - 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 an 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. 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 of Software* – Government shall obtain full rights and control over derivatives, modifications and customizations done by government on software that it uses and adopts, provided that government does not use said modified software nor its derivatives for commercial purposes.

SECTION 9. *Preference in Procurement of ICT Services and Goods* – 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 Educational Institutions*

- 10.1. The government, through the Commission on Higher Education (CHED), the National Computing Center (NCC), the Department of Science and Technology (DOST) and other appropriate agencies shall promote FOSS by providing laboratories; organizing competitions; encouraging research, thesis and dissertations on FOSS development and the development of open standards;
- 10.2. Within eight (8) months after this Act takes effect, the Department of Education, the Department of Science and Technology, the Commission on Higher Education and Technical Education and Skills Development Authority (TESDA) shall spearhead the formulation and implementation of a curriculum for students and teachers training in the use and development of FOSS in all levels of education. They will also formulate, in cooperation with the Council on Information and Communications Technology (CICT) and other appropriate agencies, 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 higher educational institution to offer, as part of its curriculum, a professional certification program on the use and implementation of proprietary software and solutions if it does not offer, also as part of its
- 10.4. curriculum, a similar certification program for FOSS and open standards.

SECTION 11. *Promotion of FOSS and Open Standards in the Private Sector* – The government will provide various types of non-fiscal incentives and support to private sector entities involved in the use, promotion and development of FOSS and open standards.

SECTION 12. *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 process 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 IS GENERALLY KNOWN AS FREE/OPEN SOURCE SOFTWARE OR FORM PART OF EXISTING OPEN STANDARDS, OR ANY OF THEIR DERIVATIVES.

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SECTION 13. *Implementation* – The Council on Information and Communications Technology (CICT) shall be the main government agency to oversee the implementation of this Act. Within six (6) months after this Act takes effect, the CICT shall:

13.1. Submit to the Office of the President and to Congress an audit of all existing government ICT systems, and it’s recommendations as to system migration and changes needed to fulfill the objectives of this Act;

13.2. Come up with implementing rules and regulations for this Act which shall include as minimum the following:

13.2.1. 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,

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

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

SECTION 14. *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*", and/or the "Civil Service Law" as amended.

13.2. The Commission on Higher Education (CHED) 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 and one pesos (P50,001.00) 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 two (2) years in the discretion of the courts; and,

(c) **"Third Offense"** – A fine of not less than one hundred thousand and one pesos (P100,001.00) but no more than two hundred one thousand pesos (P200,000.00), revocation of license for the school to operate, and / or imprisonment of the school officials of not less than two (2) years and one day but no more than four (4) years in the discretion of the courts;

The criminal prosecution of the offenses under Section 13.2 of this Act shall be under the jurisdiction of the Metropolitan Trial Court, Municipal Trial Court or the Municipal Circuit Court as the case maybe.

SECTION 15. *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 16. *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 17. *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.