

HB 5769: "Free/Open Source Software (FOSS) Act of 2006"

The draft of the FOSS Bill of 2006, introduced by Rep. Teodoro Casiño
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, Unix, and Adobe, among others.

Unlike proprietary software, FOSS is **cheap** (in fact, most FOSS are distributed gratis to the public by their own developers 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, most widely-used proprietary software have equivalent FOSS which are cheaper, safer and more robust. This is why the use of FOSS is steadily gaining ground in many countries in Europe, North America, Latin America and Asia.

FOSS gives software users freedom – the freedom to run the program in any way one wishes, to study and modify its source codes, to make copies and distribute them as one wishes, and to redistribute the said program.

An 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% over a span of three years 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, promoting citizens' knowledge about software and software techniques, encouraging cooperation among the citizenry, and providing the public with democratic control over the software that it uses.

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 desktop solution for office and school use based on GNU/Linux, and Bayanihan Linux Server 2006, an easy-to-use GNU/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, mainly because they are distributed by their developers for 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) Guarding the people's right to access public informations (2) Lowering the overall cost of ICT in the public and private sectors by reducing the country's dependence on proprietary software and computer applications; (3) Making IT more accessible to a greater

number of users; (4) Unlocking the potential and encouraging the development of a self-reliant, genuinely Filipino IT industry; and, (5) Providing greater security for highly sensitive government and private information systems.

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

REP. TEODORO A. CASIÑO

Party-list Bayan Muna

Republic of the Philippines

HOUSE OF REPRESENTATIVES

Quezon City

THIRTEENTH CONGRESS

Third Regular Session

HOUSE BILL NO. 5769

Introduced by **Representative Teodoro A. Casiño**

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 - In lieu of Section 24 of Article II of the Constitution which declares that, "*The State recognizes the vital role of communication and information in nation building*"; and *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:

1. Ensure self-reliance of the State in technology and technology capabilities, in accordance to Article XIV, Sec. 10 of the Constitution by ensuring the State has access to source codes and power over its computing ;
2. Strengthen access of the public to information and government data in accordance with Article III, Section 7 of the Constitution by mandating the use of open standards in government hence ensuring the interoperability of data and government communication;
3. Promote the preferential use of domestic material and Filipino labor in information communications technology, in accordance with Art XII, Sec. 12 of the Constitution;
4. 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,
5. 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, the licenses of which are generally approved by an internationally renowned FOSS advocate body

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 schools and government-owned and-controlled corporations.

SECTION 4. *Open Standards so defined* – Open Standards are standards, protocols, specifications and, any other data formats made available to the general public and are developed, approved and maintained via a public, collaborative, transparent and consensus-driven process. In addition, open standards must meet all of the following criteria:

1. The adoption and development of the standard included the consideration of and response to comments by interested parties and occurs on the basis of an open decision-making procedure available to all;
2. The standard has been published and the document published is available freely. It must be permissible for all to copy, distribute and use it for no fee at all;
3. The standard is affirmed by an international standards development organization (SDO) or, in the absence of such affirmation, at least by an SDO commissioned by the government;
4. The standard is vendor neutral and allows for sufficient development of a variety of competing implementation of interoperable products or services; and,
5. There are no constraints on the re-use of the standard.

SECTION 5. *Free/Open Source Software (FOSS) so defined* – Free/Open Source Software (FOSS) are software that meets all of the following criteria:

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;
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;
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. The license to use must not discriminate against persons nor a specific group of persons;
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;
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,
7. The license must be technology neutral. No foreseeable/deliberate restrictions should be placed regarding the use of the software in any platform, or for any purpose;

SECTION 6. *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 7. *Government Rules and Policies on the Use and Adoption of open Standards and FOSS in government*

1. ***Use of Open Standards*** – The Government shall use only ICT goods and services that comply with open standards as defined in section 4 of this Act;

2. **Open Formats** – all government communication and data intended for public consumption shall be encoded in open standard data formats;
3. **Clarification on the Use of RAND License for Open Standards** – open standards licensed under “Reasonable and Non-Discriminatory” (RAND) terms and hence are not free but are available for a reasonable fee shall be used only under extraordinary circumstances as defined in section 7.5 of this Act.
4. **Use of FOSS** – The government shall apply only FOSS or FOSS solutions, as defined in section 5 of this Act, in all ICT projects and activities;
5. **Extraordinary Circumstances** – The following are extraordinary circumstances which may exempt government from using open standards and FOSS:
 1. Where there is no reasonably available ICT good or services supporting open standards and/or FOSS in the field, area or activity that the Government intends to enter or participate; or,
 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 and/or FOSS that can be used with the said proprietary system.
6. **Determination of Extraordinary Circumstances** – The CICT, through the Office of FOSS Migration created under section 17 of this Act shall determine, through a public hearing, whether there exists extraordinary circumstances that will exempt a government agency or project from sections 7.1 to 7.4 of this Act.
7. **Limitations of Proprietary Standards and Software in Government Use** – Should there exist extraordinary circumstances as enumerated in Section 7.5, the government may use proprietary standards and software subject to the following conditions:
 1. The state shall procure, purchase or acquire only ICT goods and services that are interoperable and scalable with open standards;
 2. The state shall procure, purchase or acquire available software that offers license most similar to FOSS as defined in Section 4 of this Act; and,
 3. Open standards and FOSS will be selected and given preference when existing systems are to be retired or need major enhancements.

SECTION 8. Adoption of FOSS policy in Government Research and Development –

All government programs must adhere to open standards and must execute, run or compile in FOSS platforms. All software developed by government must be FOSS and open standards compliant except in exigent circumstances where national security may be in peril, or in such other cases where the right to freedom to public information are reasonably controlled as provided for by law.

In case of exigent circumstances, government shall release under a FOSS license for public consumption said software, system and ICT goods and services when it is to be retired or replaced.

SECTION 9. 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 10. *Preference in Procurement of ICT Services and Goods* – In case there is more than one company that offers FOSS and open standard compliant solutions to the government with almost equal TCO, preference shall be given to the Filipino-owned ICT company.

SECTION 11. *Promotion of FOSS and Open Standards in Educational Institutions*

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;
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 Commission 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.
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 curriculum, a similar certification program for FOSS and open standards.

SECTION 12. *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 13. *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:

---xxx---

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,

1. COMPUTER PROGRAMS, TECHNIQUES AND METHODS IN COMPUTING AND ARRANGING DATA FOR USE IN DIGITAL FORMAT, INCLUDING ALGORITHMS; AND,
2. PROTOCOLS, SPECIFICATIONS, METHODS OF ARRANGING DATA THAT ARE KNOWN TO FORM PART OF OPEN STANDARDS OR ARE INTEGRAL TO IMPLEMENTATION OF OPEN STANDARDS.

--XXX--

SECTION 14. Penalties –

1. Any act or omission, on the part of any public official(s) and/or individuals, juridical or otherwise, 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*", "The Civil Service Law as Amended" or both whichever is applicable.
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. *Implementation* – The Commission 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:

1. Submit to the Office of the President and to Congress an audit of all existing government ICT systems, and its recommendations as to system migration and changes needed to fulfill the objectives of this Act;
2. Come up with implementing rules and regulations for this Act which shall include as minimum the following:
 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,
 2. Within five years, 75% of all existing government systems shall be open standards compliant and all government communication and research data intended for public consumption and access shall be in open standard data format;
 3. Within five years, 75% of all existing government systems shall employ FOSS. To be qualified as compliant to this act, one machine is counted as employing FOSS when at the minimum, its operating system, and the computing programs used to fulfill the purpose of the machine (e.g. office suite programs for machines intended for office use, or counting programs for counting machines) are FOSS.
 4. IRR on the effective advocacy, training, and development of a FOSS community in the Philippines that will help in the development of FOSS programs and in the advocacy of FOSS.

SECTION 16. *Amending EO 269, Promulgating Additional Mandate to the* CICT– To successfully implement provisions of this Act, the mandate of CICT shall now include the ff:

1. Catalogue, compile and publish all existing international open standards applicable for the Philippines;
2. Pending an applicable international open standards for the Philippines, the CICT shall spearhead the development of an Open standard for the country in the process ensuring the participation of Philippine ICT professional organizations, Non-Government Organizations and all other stake-holders in the creation of such;
3. Ensure the compliance of all government agencies in open standards; and,
4. Encourage private entities to adopt systems and solutions compliant with open standards;

SECTION 17. *Creating the Office on FOSS Migration* – It is hereby created *The Office on FOSS Migration* which shall be attached to the CICT and shall be headed by a known FOSS advocate with at least 10 years of experience in the field of ICT primarily on implementing FOSS and ensuring open standard compliance in a particular private enterprise or in government, or s/he may be a lawyer who is a known FOSS advocate with extensive experience of not less than 10 years in his/her field of expertise.

Said head of the office of FOSS migration shall enjoy all the privileges, benefits including compensation and other emoluments equivalent to the Commissioners of the CICT.

The new office thus created shall have the following mandate, duties, powers, and responsibilities:

1. Ensure the efficient, prompt, and successful migration of all government ICT goods and services to FOSS as mandated in this Act and its IRR;
2. Determine, upon request of a government agency, if there exists extraordinary circumstances enumerated in section 7.5 of this Act that will exempt a particular project or ICT implementation from sections 7.1 -7.4 of this Act.
3. Review and ensure the compliance of all government agencies to pertinent provisions of this Act;
4. Train and develop human capital for FOSS in the Philippines;
5. Coordinate with the DOST, National Computing Center (NCC) and other government agencies, State Universities and Colleges, for modification, customization and development of FOSS for government use;
6. Aid in the prosecution of public officials and individuals, juridical or otherwise acting in conspiracy with government officials in refusing to implement provisions of this Act;
7. Create its own sub offices, hire staff including programmers for modification, improvement and development of existing FOSS, and seek the services of consultants to aid in its mandate and successful implementation of this Act;
8. Disburse funds thereof for its operations;

SECTION 18. Appropriations – The sum of twenty million pesos (P20,000,000.00) shall be allocated for the CICT for the implementation of its new additional mandate, and another fifty million pesos (P50,000,000.00) for the creation and operations of the Office of FOSS Migration for the first year this bill is enacted into law. Appropriations for the implementation of this Act for the succeeding years shall be included in the *General Appropriations Act*.

SECTION 19. Repealing Clause – Section 22 of RA 8293 otherwise known as the “Intellectual Property code of the Philippines” is hereby amended in accordance to Section 13 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 20. 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 21. 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.