CHAPTER 2001-251

Committee Substitute for Senate Bill No. 2220

An act relating to governmental data processing; creating s. 119.084, F.S.; providing definitions; authorizing governmental agencies to acquire, hold, and enforce copyrights for data processing software they create; authorizing sale or license of such software; authorizing establishment of sales price and licensing fee; providing requirements for electronic recordkeeping systems; providing for access to public records maintained in electronic recordkeeping systems; providing for fees to be charged for copying public records maintained in electronic recordkeeping systems; prohibiting contracts for public records databases that impair public access to public records; providing for future review and repeal; providing a finding of public necessity; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1.   Section 119.084, Florida Statutes, is created to read:

119.084   Definitions; copyright of data processing software created by governmental agencies; sale price and licensing fee; access to public records; prohibited contracts.—

(1)   As used in this section:

(a)   "Agency" has the same meaning as in s. 119.011(2), except that the term does not include any private agency, person, partnership, corporation, or business entity.

(b)   "Data processing software" means the programs and routines used to employ and control the capabilities of data processing hardware, including, but not limited to, operating systems, compilers, assemblers, utilities, library routines, maintenance routines, applications, and computer networking programs.

(c)   "Proprietary software" means data processing software that is protected by copyright or trade secret laws.

(2)   Any agency is authorized to acquire and hold copyrights for data processing software created by the agency and to enforce its rights pertaining to such copyrights, provided that the agency complies with the requirements of this section.

(a)   Any agency that has acquired a copyright for data processing software created by the agency may sell or license the copyrighted data processing software to any public agency or private person and may establish a price for the sale and a license fee for the use of such data processing software. Proceeds from the sale or licensing of copyrighted data processing software shall be deposited by the agency into a trust fund for the agency's appropriate use for authorized purposes. Counties, municipalities, and other political subdivisions of the state may designate how such sale and licensing proceeds

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are to be used. The price for the sale of and the fee for the licensing of copyrighted data processing software may be based on market considerations. However, the prices or fees for the sale or licensing of copyrighted data processing software to an individual or entity solely for application to information maintained or generated by the agency that created the copyrighted data processing software shall be determined pursuant to s. 119.07(1).

(b) The provisions of this subsection are supplemental to, and shall not supplant or repeal, any other provision of law that authorizes an agency to acquire and hold copyrights.

(3) Subject to the restrictions of copyright and trade secret laws and public records exemptions, agency use of proprietary software must not diminish the right of the public to inspect and copy a public record.

(4) An agency must consider when designing or acquiring an electronic recordkeeping system that such system is capable of providing data in some common format such as, but not limited to, the American Standard Code for Information Interchange.

(5) Each agency that maintains a public record in an electronic recordkeeping system shall provide to any person, pursuant to this chapter, a copy of any public record in that system which is not exempted by law from public disclosure. An agency must provide a copy of the record in the medium requested if the agency maintains the record in that medium, and the agency may charge a fee which shall be in accordance with this chapter. For the purpose of satisfying a public records request, the fee to be charged by an agency if it elects to provide a copy of a public record in a medium not routinely used by the agency, or if it elects to compile information not routinely developed or maintained by the agency or that requires a substantial amount of manipulation or programming, must be in accordance with s. 119.07(1)(b).

(6) An agency may not enter into a contract for the creation or maintenance of a public records database if that contract impairs the ability of the public to inspect or copy the public records of that agency, including public records that are on-line or stored in an electronic recordkeeping system used by the agency. Such contract may not allow any impediment that as a practical matter makes it more difficult for the public to inspect or copy the records than to inspect or copy the agency's records. The fees and costs for the production of such records may not be more than the fees or costs charged by the agency.

(7) This section is subject to the Open Government Sunset Review Act of 1995 in accordance with s. 119.15 and shall stand repealed on October 2, 2006, unless reviewed and saved from repeal through reenactment by the Legislature.

Section 2. The Legislature finds that it is a public necessity to permit governmental agencies to acquire, hold, and enforce copyrights for data processing software created by the agency. Allowing agencies to copyright their software enables agencies to sell or license the software at a fair

<u>market value to public agencies or private persons and recoup production expenses. Governmental agencies spend valuable public resources on developing and creating software to enhance system productivity. Currently there is no protection from any person obtaining software created by an agency at the expense of taxpayers and using that software without restriction for personal or financial gain. This exemption is needed to protect the integrity and development of computer technology design created by governmental agencies by restricting the use of the software for commercial purposes. The Legislature also finds that this exemption protects the public by ensuring that access to electronic public records is not prohibited. Thus, the public benefit in copyrighting governmental software significantly outweighs any public or private harm because the use of this information without the necessary restrictions adversely impacts governmental agencies' proprietary rights.</u>

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

Approved by the Governor June 15, 2001.

Filed in Office Secretary of State June 15, 2001.