SIXTEENTH CONGRESS OF THE REPUBLIC)
OF THE PHILIPPINES)
Second Regular Session)

Senate
Office of the Secretary

'14 JUL 21 P2 :33

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S E N A T E

Senate Bill No. 2319

INTRODUCED BY **SEN. JINGGOY EJERCITO ESTRADA**

AN ACT
PROMOTING THE DEVELOPMENT AND USE OF FREE / OPEN SOURCE OF SOFTWARE (FOSS) IN THE PHILIPPINES, AND FOR OTHER PURPOSES

EXPLANATORY NOTE

This bill seeks to promote the development and use of **Free and Open-Source Software (FOSS)** in the Philippines. FOSS is defined as "computer software that can be classified as both free software and open source software. That is, anyone is freely licensed to use, copy, study and change the software in any way and the source code is openly shared so that people are encouraged to voluntarily improve the design of the software. This is in contrast to propriety software, where the software is under restrictive copyright and the source code is usually hidden from the users. The benefits of using FOSS include decreasing software costs, increasing security and stability (especially in regard tomalware), protecting privacy, and giving users more control over their own hardware. Free, open-source operating systems such as Linux and descendents of BSD are widely utilized today, powering millions of servers, desktops, smartphones (e.g. Android) and other devices. Free software licenses and open-source licenses are used by many software packages" [Wikipedia]

This bill, which mandates the use of FOSS, open standards and open formats 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) Promoting 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 ICT 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.

This measure was previously filed by Sen. Manny Villar in the 15th Congress In view of the foregoing, passage of the bill is earnestly sought.

JINGGOY EJERCITO ESTRADA
Senator

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Be it enacted by the Senate and the 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 2014***".

SEC. 2. *Declaration of Policy.* – In accordance with 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 and communication technology (ICT) 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 the policy of the State to:

1) Ensure the self-reliance of the State in technology and technology capabilities, in accordance with Article XIV, Sec. 10 of the Constitution, by ensuring that the State has access to the source codes of its computers' software;

2) Strengthen the public's access to information and government data, in accordance with Article III, Section 7 of the Constitution, by mandating the use of open standards and formats in government, hence ensuring the interoperability of data and government communications;

3) Promote the preferential use of domestic material and Filipino labor in information communications technology, in accordance with Article 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 with Article XII, Sec. 14 of the Constitution.

SEC. 3. *Definition of Terms.* – For purposes of this Act, the following terms and phrases are so defined:

(a) *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;

(b) *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;

(c) *Open standards* – those 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 includes the consideration of and response to inputs 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 published document is available freely. It must be permissible for all to copy, distribute and use it without any fee;

3) The standard is affirmed by an international standards development organization (SDO) or, in the absence of such affirmation, at least by a government-commissioned SDO;

4) The standard is vendor neutral and allows for sufficient development of a variety of competing interoperable products or services, and;

5) There are no constraints on the re-use of the standard.

(d) *Open Format* – a published specification for storing digital data that is based on and employs open standards, and which are implementable by both proprietary and free-open source software;

(e) *Free-Open Source Software (FOSS)* – any software computer program 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 Paragraph 4.2 of this Section, 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 Paragraphs 4.2 and 4.3 of this section;

6) 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 conjunction 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.

(f) *FOSS License* – any license and/or end-user agreement that ensures free access and redistribution of free / open source software, the licenses of which are generally approved by an internationally recognized FOSS advocate body;

(g) *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;

(h) *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.

SEC. 4. *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.

SEC. 5. *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 except under extraordinary circumstances as defined in Section 5.5 of this Act;

2. *Use of Open Formats* – All government communication and data intended for public consumption shall be encoded in open standard data format;

3. *Use of FOSS* – The government shall apply only FOSS or FOSS solutions in all ICT projects and activities except under extraordinary circumstances as defined in Section 5.5 of this Act;

4. *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 5.5 of this Act;

5. *Extraordinary Circumstances* – The Commission on Information and Communications Technology (CICT), through the Office of FOSS Migration created under Section 15 shall determine, through public hearing, whether there exists extraordinary circumstances that will exempt a government agency or project from Sections 5.1 to 5.4 of this Act. Extraordinary circumstances exist when:

    a) There is no reasonably available ICT goods or services supporting open standards and/or FOSS in the field, area or activity that the government intends to engage in, or;

    b) 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. Limitations on the Use of Proprietary Standards and Software in Government – Should there exist extraordinary circumstances as enumerated in Section 5.5 of this Act, the government may use proprietary standards and software subject to the following conditions:

    a) The state shall procure, purchase or acquire only ICT goods and services that are interoperable and scalable with open standards;

    b) The state shall procure, purchase or acquire available software that offers license most similar to FOSS as defined in Section 3 of this Act, and;

    c) Open standards and FOSS will be selected and given preference when existing systems are to be retired or need major enhancements.

SEC. 6. *Adoption of FOSS Policy in Government Research and Development.* – 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 case where the right to freedom to public information is 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.

SEC. 7. *Provision Against Single Vendor Lock-in and Dependence.* – Under no circumstances shall the government acquire ICT goods and services that are 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.

SEC. 8. *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 total cost of ownership, preference shall be given to the Filipino-owned ICT Company.

SEC. 9. *Promotion of FOSS and Open Standards in Educational Institutions.* –

1. The government, through the Commission on Higher Education (CHED), Department of Education (DepEd), the National Computer Center (NCC), the Department of Science and Technology (DOST) and other appropriate agencies shall promote FOSS by providing laboratories, organizing competitions, and encouraging research, thesis and dissertations on FOSS development and the development of open standards;

2. Within eight (8) months after this Act takes effect, DepEd, DOST, CHED and the Technical Education and Skills Development Authority (TESDA) shall spearhead the formulation and implementation of a curriculum for training students and teachers on the use and development of FOSS in all levels of education. They will also formulate in cooperation with the 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. Higher educational institutions that offer professional certification programs on the use and implementation of proprietary software and solutions will be encouraged to offer similar certification programs for FOSS and open standard solutions.

SEC. 10. *Promotion of FOSS and Open Standards in the Private Sector.* – The government shall 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.

SEC. 11. *Amending Section 22 of Republic Act 8293, otherwise known as the "Intellectual Property Code of the Philippines.* – Section 22 of RA 8293 otherwise known as the Intellectual Property Code of the Philippines is hereby amended to read as follows:

"X x x

"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 the 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 microorganisms 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. COMPUTER PROGRAMS, TECHNIQUES AND METHODS IN COMPUTING AND ARRANGING DATA FOR USE IN DIGITAL FORMAT, INCLUDING ALGORITHMS;

22.7. PROTOCOLS, SPECIFICATIONS, METHODS OF ARRANGING DATA THAT ARE KNOWN TO FORM PART OF OPEN STANDARDS OR ARE INTEGRAL TO IMPLEMENTATION OF OPEN STANDARDS, AND;

22.8. Anything which is contrary to public order or morality."

SEC. 12. *Penalties.* – 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.

SEC. 13. *Implementation.* – The Commission on Information and Communications Technology (CICT) shall be the main government agency tasked 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:

   a) Within three (3) years, 90% of government IT professionals, and 65% of the country's IT professionals must be proficient in the implementation of FOSS systems;

   b) Within five (5) 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;

   c) Within five (5) 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.

d) The effective advocacy, training and development of a FOSS community in the country that will help in the development of FOSS programs and in the advocacy of FOSS.

SEC. 14. *Amending Executive Order 269, Promulgating Additional Mandate to the CICT.* – To successfully implement the provisions of this Act, the mandate of CICT shall now include the following:

1) Catalogue, compile and publish all existing international open standards applicable to the Philippines;

2) Pending applicable international open standards for the Philippines, the CICT shall spearhead the development of open standards for the country in the process ensuring the participation of Philippine ICT professional organizations, non-government organizations and other stakeholders in the creation of such;

3) Ensure the compliance of all government agencies to this Act; and,

4) Encourage private entities to adopt systems and solutions compliant with open standards.

SEC. 15. *Creating the Office on FOSS Migration.* – There shall be created an Office on FOSS migration to be headed by a known FOSS advocate with at least ten years of experience in the field of ICT and FOSS. Such office shall be an attached agency of the CICT with its head receiving compensation, benefits, privileges and other emoluments equivalent to a Commissioner 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 5.5 of this Act that will exempt a particular project or ICT implementation from Sections 5.1 to 5.4 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 Computer 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; and,

8) Disburse funds thereof for its operations.

SEC. 16. *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.

SEC. 17. *Separability Clause.* – If any provision of this Act shall at any time be found to be unconstitutional or invalid, the remainder thereof not affected by such declaration shall remain in full force and effect.

SEC. 18. *Repealing Clause.* – All laws, decrees, rules or regulations inconsistent with the provisions of this Act are hereby repealed or modified accordingly.

SEC. 19. *Effectivity Clause.* – This Act shall take effect after fifteen (15) days following its complete publication in two (2) newspapers of general circulation.

Approved,