

STORAGE NAME: h0789.it.doc

DATE: March 12, 2001

**HOUSE OF REPRESENTATIVES
COMMITTEE ON
HOUSE INFORMATION TECHNOLOGY
ANALYSIS**

BILL #: HB 789

RELATING TO: COPYRIGHT OF GOVERNMENT DATA PROCESSING SOFTWARE

SPONSOR(S): MEALOR

TIED BILL(S):

ORIGINATING COMMITTEE(S)/COUNCIL(S)/COMMITTEE(S) OF REFERENCE:

- (1) HOUSE INFORMATION TECHNOLOGY
 - (2) FISCAL POLICY & RESOURCES
 - (3) READY INFRASTRUCTURE COUNCIL
 - (4)
 - (5)
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I. SUMMARY:

HB 789 would create s. 119.084, F. S., and would, among other provisions:

- Authorize any agency, as defined in s. 119.011 (2), to hold and enforce a copyright of data processing software and to sell or license such software to other public or private entities;
- Require that agency use of such software not diminish the right of the public to inspect and copy a non-exempt public record;
- Require an agency maintaining a public record in an electronic record keeping system to provide to any person requesting the same under a copy of such record in the medium requested if the agency maintains the record in the requested medium in exchange for payment of a fee established pursuant to s. 119.07 (1) (a) or, if the agency does not maintain the record in the requested medium, to permit the agency to nonetheless provide a copy of the record in such medium in exchange for payment of a fee established pursuant to s. 119.07 (1) (b);
- Prohibit an agency from contracting for creation or maintenance of a public records database that impairs public inspection or copying of public records;
- Make the provisions of the bill subject to the Open Government Sunset Review Act of 1995 in accord with s. 119.15; and
- Provide that such provisions shall be repealed on October 2, 2006, unless reenacted before that date, and to provide legislative findings supportive of the provisions of the bill.

II. SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

- | | | | |
|-----------------------------------|------------------------------|-----------------------------|---|
| 1. <u>Less Government</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 2. <u>Lower Taxes</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. <u>Individual Freedom</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 4. <u>Personal Responsibility</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 5. <u>Family Empowerment</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

For any principle that received a "no" above, please explain:

B. PRESENT SITUATION:

On October 1, 2000, the effect of the provisions of former s. 119.083, F. S., expired pursuant to s. 2, ch. 90-237, Laws of Florida. Thus, the provisions of former s. 119.083 are no longer effective and have not yet been otherwise replaced by any other law enacted subsequent to the enactment of s. 2, ch. 90-237, Laws of Florida. HB 789 would reestablish and supplement the provisions of former s. 119.083.

C. EFFECT OF PROPOSED CHANGES:

HB 789 would create s. 119.084 to:

- Reestablish the provisions of s. 119.083 in their entirety;
- Add a subsection (7) that would subject the effect of s. 119.084 to repeal on October 2, 2006, if not continued in effect by subsequent legislation enacted before that date; and
- Add a statement of legislative findings supporting the reestablishment of the provisions of s. 119.083.

D. SECTION-BY-SECTION ANALYSIS:

Section 1 of HB 789 would create s. 119.084, F. S., to reestablish the provisions of former s. 119.083, F. S., and adds a subsection (7) that subjects the provisions of the bill to repeal on October 2, 2001, unless subsequent legislation is enacted before that date continuing the effect of proposed s. 119.084.

Section 2 of HB 789 would state legislative findings supporting creation of s. 119.084, F. S., to reestablish and supplement the provisions of former s. 119.083, F. S.

Section 3 of HB 789 would provide an effective date.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

Enactment of HB 789 should result in continuing the receipt of revenues that were received under former s. 119.083, F. S., from holding and enforcing the copyright of data processing software and from selling or licensing such copyright.

2. Expenditures:

Enactment of HB 789 should not result in increasing the level of expenditures that were incurred under former s. 119.083, F. S., from an agency holding and enforcing a copyright of data processing software, or from selling or licensing such copyright.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None

2. Expenditures:

None

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Enactment of HB 789 would continue to prevent the private sector from unconditionally obtaining and using without restraint any data processing software created by an agency to which the agency acquired and held a copyright without purchasing the agency's copyright to the software or entering into a licensing agreement with the agency authorizing use of the software.

D. FISCAL COMMENTS:

There is not yet available any estimate of economic impact of HB 789.

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

Because HB 789 would reestablish the provisions of former s. 119.083, F. S., enactment of the bill would be exempt from the requirements of Article VII, Section 18, of the Florida Constitution.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

Because HB 789 would reestablish the provisions of former s. 119.083, F.S., enactment of the bill would be exempt from the requirements of Article VII, Section 18, of the Florida Constitution.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

Because HB 789 would reestablish the provisions of former s. 119.083, F. S., enactment of the bill would be exempt from the requirements of Article VII, Section 18, of the Florida Constitution.

V. COMMENTS:

A. CONSTITUTIONAL ISSUES:

None.

B. RULE-MAKING AUTHORITY:

HB 789 does not expressly authorize an agency to adopt rules implementing the authority the bill would delegate in respect of holding and enforcing a copyright to government created data processing software, or to selling or licensing such a copyright.

C. OTHER COMMENTS:

HB 789 does not expressly provide for an agency to acquire a copyright to data processing software. Although acquisition of copyrights is contemplated by the bill (*i.e.*, in order to hold a copyright on software it has developed, an agency must first acquire that copyright), an amendment expressly authorizing such would resolve any ambiguity.

HB 789 does not expressly provide for an agency to establish the price for which any such copyright may be sold. An amendment expressly authorizing such would resolve any ambiguity.

HB 789 does not provide for the promulgation of uniform rules implementing the authority that this bill would be conferred on agencies. As the State Technology Office ("STO") is the entity responsible for the implementation of information technology policies and services across-the-board for *state agencies*, STO should be given the authority to promulgate uniform policies implementing s. 119.084, F.S., as it pertains to state agencies.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

VII. SIGNATURES:

COMMITTEE ON HOUSE INFORMATION TECHNOLOGY:

Prepared by:

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