

HB 617-FN - AS INTRODUCED

2023 SESSION

23-0188

06/08

HOUSE BILL **617-FN**

AN ACT prohibiting, with limited exceptions, state agencies from requiring use of proprietary software in interactions with the public.

SPONSORS: Rep. Gallager, Merr. 20

COMMITTEE: Executive Departments and Administration

ANALYSIS

This bill prohibits, with limited exception, state agencies from requiring use of proprietary software in interactions with the public.

Explanation: Matter added to current law appears in ***bold italics***.
Matter removed from current law appears [~~in brackets and struckthrough.~~]
Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Twenty Three

AN ACT prohibiting, with limited exceptions, state agencies from requiring use of proprietary software in interactions with the public.

Be it Enacted by the Senate and House of Representatives in General Court convened:

1 1 New Chapter; Free and Open Source Software. Amend RSA by inserting after chapter 21-V
2 the following new chapter:

3 CHAPTER 21-W

4 FREE AND OPEN SOURCE SOFTWARE

5 21-W:1 Mandatory Use of Proprietary Software Prohibited. No person in the state of New
6 Hampshire shall be required to use proprietary software for any interaction with the government,
7 including, but not limited to: the filing or payment of taxes, remote appearance for court
8 proceedings, the taking of standardized tests or the completion of coursework by school students,
9 applying for or receiving unemployment benefits, or other similar benefits, unless the government
10 agency has determined that the proprietary software is the only means available for the required
11 interaction. In such cases of proprietary software use, the agency shall post a notice of its
12 determination and the use of proprietary software on the agency's website.

13 2 Effective Date. This act shall take effect 60 days after its passage.

HB 617-FN- FISCAL NOTE
AS INTRODUCED

AN ACT prohibiting, with limited exceptions, state agencies from requiring use of proprietary software in interactions with the public.

FISCAL IMPACT: State County Local None

STATE:	Estimated Increase / (Decrease)			
	FY 2023	FY 2024	FY 2025	FY 2026
Appropriation	\$0	\$0	\$0	\$0
Revenue	\$0	\$0	\$0	\$0
Expenditures	\$0	In excess of \$320,157,448	In excess of \$320,157,448	In excess of \$320,157,448
Funding Source:	<input checked="" type="checkbox"/> General	<input type="checkbox"/> Education	<input type="checkbox"/> Highway	<input type="checkbox"/> Other

The Legislative Budget Assistant is still awaiting information from the Legislative Branch in response to this bill. The Legislative Branch was contacted on 01/20/2023 for a fiscal note worksheet.

METHODOLOGY:

The Department of Information Technology (DoIT) states this bill prohibits the state from requiring the public use proprietary software when visiting state websites. DoIT states there are many websites, and applications within those sites, that are managed by the Department of Information Technology (DoIT) for Executive Branch agencies. The estimates do not consider public facing applications for other branches and constitutional offices. The Department states historically the cost of implementing a new application, whether replacing an existing application or implementing applications where none existed before, is three to seven times the cost of purchasing the software licenses. To become compliant with the language of this bill the Department would have to re-implement all but “limited exception” of the existing publicly facing applications. The cost of each re-implementation for the applications would depend on the size of the applications, the complexity of the business process they support and the regulatory environment (security and privacy) they exist in. For the purposes of these estimates, applications were broken into four categories: small, medium, large and extra-large. DoIT collaborated with the IT Leads for each Executive Branch agency to look at the cost of recent software implementations to determine the average cost for each category. The Department states that due to unique laws and customs in each state, state government applications are very specific to the state they are operating in. This means that there will be

very few, if any, existing opensource applications that could simply be implemented in place of their commercial counterparts. Having a preponderance of outwardly facing applications operating in an opensource environment would require that most be developed from scratch or heavily modified if there were existing applications that have similar capabilities to what is required.

DoIT states additional staff to support the effort would be brought on under a competitively bid contract that would maintain an opensource ecosystem, customize existing opensource platforms to our needs and write applications from scratch if there is no opensource base to work from. The Department estimates this will require twenty ten-person sprint teams as well as a vendor program lead and five project managers. Each sprint team would consist of a scrum master (facilitator), a business analyst, five software engineers and three software quality engineers. The vendor team would consist of two hundred and six people. On the state site DoIT would need a team of six people to manage the vendor relationship, monitor and report on progress and to coordinate all the activities. This team would consist of a director, a financial analyst and four business analysts.

The duration of this project would be five years, so the fiscal impact would go beyond the scope of this fiscal note. The Department inventoried a total of 670 Executive Branch applications of which 271 are in scope for this language. In scope is defined as having externally facing (web site) components. Since the "limited exception" language is non-specific DoIT assumes 90% of the small, medium and large applications will be brought into compliance. They also assume all the extra-large applications will be brought into compliance. The Department assumes that the fiscal impact will be linear, and that one fifth of the total cost for application compliance will be borne each year of the five-year program. They state the cost of the program will need to be funded by the state general fund as this work will not qualify for other funding sources.

DoIT estimates the cost for application compliance using the following assumptions:

- Number of small systems * compliance cost for a small system*.9 = total cost for small systems
- Number of medium systems * compliance cost for a medium system*.9 = total cost for medium systems
- Number of large systems * compliance cost for a large system*.9 = total cost for large systems
- Number of extra-large systems * compliance cost for each extra-large system = total cost for extra-large systems

The Department estimated the average for compliance and annual costs for contracted staff derived from an existing statewide contract for staff augmentation. DoIT indicates there are

215 small systems, 36 medium systems, 17 large systems and 3 extra-large systems. The extra-large systems include NH FIRST (statewide ERP), New HEIGHTS (Integrated Eligibility) and MMIS (Medicaid Enterprise System). DoIT estimates the project will take at least 5 years to make the necessary changes resulting in a total state general fund cost of approximately \$1.47 Billion. See table below for average annual costs:

Cost for Application Compliance (Spread Out over 5 Years):

Average Annual Cost

Small Systems	\$46,440,000
Medium Systems	\$45,360,000
Large Systems	\$67,320,000
Extra Large Systems:	
NH FIRST	\$15,000,000
New HEIGHTS	\$32,000,000
MMIS	<u>\$40,000,000</u>
<i>Subtotal - Application Compliance</i>	<i>\$246,120,000</i>

Cost of Contracted Staff:

Vendor Program Oversight -

1 Vendor Program Lead	\$429,000
5 Project Managers	\$1,628,520

Program Execution (20 Sprint Teams) -

20 Scrum Masters	\$5,460,000
20 Business Analysts	\$4,095,000
100 Software Engineers	\$22,881,300
100 Software Quality Engineers	<u>\$12,527,190</u>
<i>Subtotal - Contracted Staff</i>	<i>\$47,021,010</i>

Cost of State Staff:

State Program Oversight -

1 Director, Opensource Program (LG 34)	\$143,204
1 Financial Analyst (LG 29)	\$118,134
4 Business Analysts (LG 30)	<u>\$492,272</u>
<i>Subtotal - State Staff</i>	<i><u>\$753,610</u></i>

TOTAL ANNUAL COST **\$293,894,620**

The Judicial Branch states they identified any outwardly facing New Hampshire Judicial Branch (NHJB) website applications needing to be compliant under this bill. The NHJB states there are many websites, and applications within those sites, that are managed by the NHJB's

IT Department. The estimates do not consider public facing applications for other branches and constitutional offices.

To develop the fiscal impact, the NHJB states it would have taken more resources than they currently have to get a precise quote of the cost to evaluate bringing each application into full compliance, so they have chosen to take a formulaic approach as developed by the Executive Branches' DoIT. To become compliant with the language of this bill the NHJB would have to re-implement all but "limited exception" of the existing publicly facing applications. The cost of each re-implementation for the applications would depend on the size of the applications, the complexity of the business process they support and the regulatory environment (security and privacy) they exist in. For the purposes of these estimates, applications were broken into four categories: small, medium, large and extra-large. The NHJB collaborated with the IT Managers to look at the cost of recent software implementations to determine the average cost for each category. The NHJB states that due to unique laws and customs in each state, state government applications are very specific to the state they are operating in. This means that there will be very few, if any, existing opensource applications that could simply be implemented in place of their commercial counterparts. Having a preponderance of outwardly facing applications operating in an opensource environment would require that most be developed from scratch or heavily modified if there were existing applications that have similar capabilities to what is required.

NHJB states additional staff to support the effort would be brought on under a competitively bid contract that would maintain an opensource ecosystem, customize existing opensource platforms to our needs and write applications from scratch if there is no opensource base to work from. The NHJB estimates this will require three ten-person sprint teams as well as a vendor program lead and two project managers. Each sprint team would consist of a scrum master (facilitator), a business analyst, five software engineers and three software quality engineers. The vendor team would consist of thirty three people. On the NHJB site they would need a team of four people to manage the vendor relationship, monitor and report on progress and to coordinate all the activities. This team would consist of a director, a financial analyst and two business analysts.

The duration of this project would be five years, so the fiscal impact would go beyond the scope of this fiscal note. The NHJB inventoried a total of 55 NHJB applications of which 23 are in scope for this language. In scope is defined as having externally facing (web site) components. Since the "limited exception" language is non-specific NHJB assumes 100% of the small, medium and large applications will be brought into compliance. The NHJB assumes that the fiscal impact will be linear, and that one fifth of the total cost for application compliance will be

borne each year of the five-year program. They state the cost of the program will need to be funded by the State General Fund as this work will not qualify for other funding sources.

NHJB estimates the cost for application compliance using the following assumptions:

- Number of small systems * compliance cost for a small system = total cost for small systems
- Number of medium systems * compliance cost for a medium system = total cost for medium systems
- Number of large systems * compliance cost for a large system = total cost for large systems

The NHJB estimated the average for compliance and annual costs for contracted staff derived from an existing statewide contract for staff augmentation. NHJB indicates there are 14 small systems, 7 medium systems and 2 large systems. NHJB estimates the project will take at least 5 years to make the necessary changes resulting in a total state general fund cost of approximately \$131.3 Million. See table below for average annual costs:

Cost for Application Compliance (Spread Out over 5 Years):

Average Annual Cost

Small Systems	\$3,360,000
Medium Systems	\$9,800,000
Large Systems	<u>\$4,800,000</u>
<i>Subtotal - Application Compliance</i>	<i>\$17,960,000</i>

Cost of Contracted Staff:

Vendor Program Oversight -

1 Vendor Program Lead	\$429,000
2 Project Managers	\$651,300

Program Execution (3 Sprint Teams) -

3 Scrum Masters	\$819,000
3 Business Analysts	\$614,250
15 Software Engineers	\$3,432,195
9 Software Quality Engineers	<u>\$1,879,083</u>
<i>Subtotal - Contracted Staff</i>	<i>\$7,824,828</i>

Cost of State Staff:

State Program Oversight -

1 Director	\$135,000
1 Financial Analyst (LG 29)	\$111,000
4 Business Analysts (LG 30)	<u>\$232,000</u>

Subtotal - State Staff

\$478,000

TOTAL ANNUAL COST

\$26,262,828

This bill does not establish or provide an appropriation for new positions.

AGENCIES CONTACTED:

Department of Information Technology, Judicial Branch and Legislative Branch

CONSENT CALENDAR

March 8, 2023

HOUSE OF REPRESENTATIVES

REPORT OF COMMITTEE

The Committee on Executive Departments and Administration to which was referred HB 617-FN,

AN ACT prohibiting, with limited exceptions, state agencies from requiring use of proprietary software in interactions with the public. Having considered the same, report the same with the following resolution:

RESOLVED, that it is INEXPEDIENT TO LEGISLATE.

Rep. Tony Lekas

FOR THE COMMITTEE

COMMITTEE REPORT

Committee:	Executive Departments and Administration
Bill Number:	HB 617-FN
Title:	prohibiting, with limited exceptions, state agencies from requiring use of proprietary software in interactions with the public.
Date:	March 8, 2023
Consent Calendar:	CONSENT
Recommendation:	INEXPEDIENT TO LEGISLATE

STATEMENT OF INTENT

There are legitimate reasons to be concerned when the state requires the use of proprietary software when members of the public need to interact with the government. However, it was not clear from testimony just what software was intended to be covered by this bill. It could have only included software run on a user's device or it could have also included all software involved in the operation on the state side. It became clear that the broader interpretation was intended and the language of the bill could reasonably be interpreted that way which resulted in a fiscal note of over \$300 million per year for the next three years. In addition, this bill applies to all political subdivisions and the Judicial branch. That would add an unknown, but almost certainly, large expense. The limited benefits and the enormous cost lead the committee to recommend inexpedient to legislate.

Vote 18-1.

Rep. Tony Lekas
FOR THE COMMITTEE

Original: House Clerk
Cc: Committee Bill File

CONSENT CALENDAR

Executive Departments and Administration

HB 617-FN, prohibiting, with limited exceptions, state agencies from requiring use of proprietary software in interactions with the public. **INEXPEDIENT TO LEGISLATE.**

Rep. Tony Lekas for Executive Departments and Administration. There are legitimate reasons to be concerned when the state requires the use of proprietary software when members of the public need to interact with the government. However, it was not clear from testimony just what software was intended to be covered by this bill. It could have only included software run on a user's device or it could have also included all software involved in the operation on the state side. It became clear that the broader interpretation was intended and the language of the bill could reasonably be interpreted that way which resulted in a fiscal note of over \$300 million per year for the next three years. In addition, this bill applies to all political subdivisions and the Judicial branch. That would add an unknown, but almost certainly, large expense. The limited benefits and the enormous cost lead the committee to recommend inexpedient to legislate.

Vote 18-1.

Original: House Clerk

Cc: Committee Bill File

THESE

THESE

THESE

X	212	212	212	212	212
X	212	212	212	212	212
X	212	212	212	212	212
X	212	212	212	212	212
X	212	212	212	212	212

HOUSE COMMITTEE ON EXECUTIVE DEPARTMENTS AND ADMINISTRATION

PUBLIC HEARING ON HB 617-FN

BILL TITLE: prohibiting, with limited exceptions, state agencies from requiring use of proprietary software in interactions with the public.

DATE: February 16, 2023

LOB ROOM: 306-308 **Time Public Hearing Called to Order:** 1:00 p.m.

Time Adjourned: 2:07 p.m.

Committee Members: Reps. C. McGuire, Simon, Sirois, T. Lekas, Bailey, T. Dolan, Abare, Gerhard, Grote, P. Schmidt, Goley, Schuett, O'Brien, F. Davis, Fitzpatrick and S. Gould

Bill Sponsors:
Rep. Gallagher

TESTIMONY

* Use asterisk if written testimony and/or amendments are submitted.

Eric Gallagher

- Merrimack 20
- This bill is part of a former bill that ED&A suggested had too much in it. this bill does not require state agencies to change out their software. Take the fiscal note with a grain of salt. Zoom is an example of proprietary software that would be used to have a meeting with forms of government. He believes there should be another free software that can be utilized in place of Zoom.

John Hall

- Self
- Supports HB617. Believes everyone should have access to government through all forms. Schools sometimes require a student to purchase an apple computer. Some people only have access to computers through a local library and that becomes a state problem. Jitsi is a form of free software that people can have video meetings on most browsers.

Denis Goddard

- Self
- Supports HB617. Explained open-source format. States that the internet is an adversary environment. Explained how proprietary software can gather your information. Wants the government to make available open-source software that those that want to use it, can. Believes there should be a study committee to work on areas of specificity.

Christopher Waid

- Self
- Supports HB617. States that the government already provides alternative software for those with disabilities. Bill would make it easier for alternative forms of submissions in areas that currently require online submissions using proprietary software. States that you shouldn't be forced to submit to a contract in order to use the software.

Ben Kallus

- Self/Software Security
- Gave reasons why we should not be made to use proprietary software to interact with the government.

Denis Goulet

- DOIT
- Opposes HB617. DOIT does currently look at and consider open-source software. Currently has over one thousand Linux servers working for us. Fiscal not cost \$320 million each year. Large cost in implementation.

2023-0320h Amendment

Rep Diane Schuett

- Merrimack 12
- Explained the reasons to support the amendment.

Jess Edwards

- Rockingham 31
- Supports the amendment and the bill.

Ross Cunningham

- Merrimack County
- Supports Amendment 20-30 hours to process each RFA

David Ross

- Hillsborough County
- Supports the amendment and increase

Kate Horgan

- NH Association of Counties
- Explained why she supports the amendment.

Respectfully Submitted,

Rep Shane Sirois, Clerk

House Remote Testify

Executive Departments and Administration Committee Testify List for Bill HB617 on 2
Support: 4 Oppose: 0 Neutral: 0 Total to Testify: 0

[Export to Excel](#)

<u>Name</u>	<u>City, State</u> <u>Email Address</u>	<u>Title</u>	<u>Representing</u>	<u>Position</u>	<u>Testifying</u>	<u>Non-Germane</u>	<u>?</u>
Richardson, Daniel	Nashua, NH daniel6_22@comcast.net	A Member of the Public	Myself	Support	No	No	?
Hall, Jon	Amherst, NH jon.maddog.hall@gmail.com	A Member of the Public	Myself	Support	No	No	?
Gardner, James	Keene, NH yourgardner@protonmail.com	A Member of the Public	Myself	Support	No	No	?
Hall, Jon Anderson	Amherst, NH maddog@li.org	A Member of the Public	Myself	Support	No	No	?

Jon Hall

I read HB617 a couple of days ago, and carefully looked at the whole bill.

There seems to be a disconnect between what I read as the meaning of the bill:

AN ACT prohibiting, with limited exceptions, state agencies from requiring use of proprietary software [by the public] in interactions with the public.

and what is described in the FISCAL IMPACT Statement:

AN ACT prohibiting, with limited exceptions, state agencies from using proprietary software in interactions with the public

Note that the first one is simply saying that citizens should not be required to use proprietary software in interacting with the state.

The second one assumes that the state can not use any proprietary software in dealing with the public.

This is a HUGE difference.

The FISCAL IMPACT statement talks as if every system needs a massive update just to meet the requirements of the bill, and that this will cost 1.4 Billion dollars over five years, ignoring that existing systems typically have to be updated and replaced over that period of time and ignoring the costs associated with that updating, and ignoring that new systems needed should be created following these guidelines. I feel that the FISCAL IMPACT of HB617 would be MUCH, MUCH, MUCH smaller.

I have written to Rep. Eric Gallager (who I know and have worked with in the past) pointing out these issues, but I have not heard back from Rep. Gallager confirming that I am correct in my analysis of HB617's goals.

I will be going to the meeting on January 20th but I am very short on time tomorrow, so unless I get a chance to talk by 1400, I may have to leave.

For full disclosure I have been in the commercial computer field since 1969, using Free and Open Source Software, Hardware and Culture since 1994, and am currently the Board Chair of the Linux Professional Institute, a non-profit corporation.

James Gardner

I support this bill, No one should be required to use software that is proprietary. Proprietary software has many issues, which amongst them is that we are not able to inspect it to see what it is really doing. Recently, Deerfield Academy came to light (pun intended) as the lights at this school were not able to be shut off because they were using a lighting system with proprietary software which the company had gone out of business -- now this school will have to pay for a completely new lighting system but if they had been utilizing a system with free or open source software then they would be able to continue using the hardware they had already spent lots of money on.

New Hampshire's motto is "Live Free or Die" and this bill is exemplary of this. We should have the freedom to not be required to use software from companies that are non-ethical (such as Zoom) and instead to be able to use free/open source software instead.

Jon Anderson Hall

I attended the session on HB617 today. As I supposed once before, this bill is only mandating that citizens not be forced to use proprietary software in their dealings with government.

According to this bill there is no mandate for the government to stop using proprietary software. From this Bill it is also OK for the software in kiosks, parking meters or other "embedded systems" to be closed source, proprietary software.

Examples of government requiring citizens to use proprietary software is Zoom for video conferencing from the government to the citizen. Zoom requires the user to download software, compared to Jitsi (www.jitsi.org) that uses only a standard browser and does not need the citizen to register in any way, shape or form.

Another example would be a school that mandates a particular set of hardware, operating system and proprietary applications. Some schools have a proprietary network that precludes other operating systems and hardware from working in that environment, forcing the student to purchase a (perhaps) more expensive solution than they need.

The arguments from the state IT department given at the meeting had nothing to do with this bill. The fact that the IT department is using Drupal, or that it has 1000 servers running Linux does not in any way guarantee that the citizen will have access to services without having to buy and use proprietary software.

Another point about HB617 is that it could be a "forward looking" bill. In other words, when and if issues with citizens not being able to interact with the state because of a lack of proprietary software, the customer-facing application could be fixed. Secondly, all future RFPs should state that software and systems should not require the citizens to use proprietary software in order for the citizens to interact. This way the vendor (not the state) is the entity who needs to ensure this happens with their system on delivery to the state.

Given this interpretation of HB617, the fiscal impact of this bill will probably be very small, and might be cheaper than a lawsuit brought about by a citizen who can not interact with the State of new Hampshire simply because the State did not take action to allow that interaction.

I left my business card with the Chair and several representatives who asked questions. I have more than fifty years of experience in the computer industry with both proprietary and Free and Open Source Software (FOSS) I am not paid by any company, receive no funds, although I am the volunteer Board Chair for a nonprofit that certifies FOSS professionals. We have over 200,000 certified professionals in over 180 different countries.

Feel free to reach out to me for a balanced, truthful evaluation of issues and answers to your

questions.

HOUSE COMMITTEE ON EXECUTIVE DEPARTMENTS AND ADMINISTRATION

EXECUTIVE SESSION on HB 617-FN

BILL TITLE: prohibiting, with limited exceptions, state agencies from requiring use of proprietary software in interactions with the public.

DATE: March 8, 2023

LOB ROOM: 306-308

MOTIONS: **INEXPEDIENT TO LEGISLATE**

Moved by Rep. T. Lekas

Seconded by Rep. Grote

Vote: 18-1

CONSENT CALENDAR: YES

Statement of Intent: Refer to Committee Report

Respectfully submitted,

Rep Shane Sirois, Clerk



STATE OF NEW HAMPSHIRE
OFFICE OF THE HOUSE CLERK

1/5/2023 1:25:09 PM
Roll Call Committee Registers
Report

2023 SESSION

Executive Departments and Administration

Bill #: 617 Motion: ITL AM #: _____ Exec Session Date: 3-8-23

<u>Members</u>	<u>YEAS</u>	<u>Nays</u>	<u>NV</u>
McGuire, Carol M. Chairman	✓		
Simon, Matthew J. Vice Chairman	✓		
Lekas, Tony	✓		
Bailey, Glenn	✓		
Santonastaso, Matthew	✓		
True, Chris	✓		
Dolan, Tom	✓		
Abare, Kimberly L	✓		
Gerhard, Jason	✗	✓	
Sirois, Shane A	✓		
Grote, Jaci L.	✓		
Schmidt, Peter B.	✓		
Goley, Jeffrey P.	✓		
Schuett, Dianne E.	✓		
O'Brien, Michael B.	✓		
Wilhelm, Matthew B. <u>SOUCY</u>	✓		
Davis, Fred E.	✓		
Fitzpatrick, Daniel W	✓		
Gould, Sherry L	✓		
Smith, Juliet L <u>TREALEVAN</u>	✓		
TOTAL VOTE: <u>THE CHAIR</u>	✓		

(19) 18-1