

HB 1273 - AS INTRODUCED

2022 SESSION

22-2270

05/04

HOUSE BILL **1273**

AN ACT relative to the use of free and open source software.

SPONSORS: Rep. Gallagher, Merr. 15; Rep. Marsh, Carr. 8

COMMITTEE: Executive Departments and Administration

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ANALYSIS

This bill:

I. Prohibits certain non-compete clauses and non-disclosure agreements regarding free software projects and the sharing of open source software.

II. Prohibits, with limited exception, state agencies from using proprietary software in interactions with the public.

III. Recognizes the value of data portability and directs the department of information technology to adopt a policy protecting data portability.

IV. Prohibits state and local law enforcement from participating in the enforcement of copyright claims against free and open source software projects.

V. Establishes a commission to study the use of free software by state agencies.

VI. Establishes a software purchasing policy that permits the purchase of proprietary software and hardware only when free software alternatives are not available.

VII. Allows the defendant to examine the source code of proprietary software used to generate evidence against the defendant in a criminal proceeding.

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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Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.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 Two*

AN ACT relative to the use of free and open source software.

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

1 1 Title. The act shall be known and may be cited as the "Securing Our Freedom To Write And  
2 Read Everything (SOFTWARE) Act".

3 2 New Chapter; Free and Open Source Software. Amend RSA by inserting after chapter 21-V  
4 the following new chapter:

5 CHAPTER 21-W

6 FREE AND OPEN SOURCE SOFTWARE

7 21-W:1 Definitions. In this chapter:

8 I. "Free software" means software that gives users the freedom to run the program, to study  
9 and change the program in source code form, to redistribute exact copies, and to distribute modified  
10 versions.

11 II. "Copyleft" means the practice of using copyright law to ensure that any free intellectual  
12 property, in particular free software, remains free even after redistribution, modification, and use. A  
13 "copyleft software license" is a license designed specifically to facilitate the use of copyright in this  
14 way. A "copyleft free software project" is a collaborative project with the aim of developing software  
15 with such a license.

16 III. "Noncompete clause" shall refer to a clause of a contract in which an employer requires  
17 an employee to agree not to provide assistance to the employer's competitors. Such clauses may also  
18 be referred to as "restrictive covenants".

19 IV. "Non-disclosure agreement" shall refer to any contract or clause of a contract that  
20 restricts access to the sharing of certain information between the signing parties.

21 V. "Proprietary software" shall be understood to mean the opposite of "free software" as  
22 defined in paragraph I.

23 21-W:2 Noncompete Clauses. Notwithstanding RSA 275:50, any noncompete clause by which an  
24 employer prevents an employee from contributing to a free software project they might wish to  
25 contribute to, shall be void and unenforceable in the state of New Hampshire.

26 21-W:3 Non-disclosure Agreement. No employer in the state of New Hampshire shall use non-  
27 disclosure agreements to prevent employees from sharing the source code of free and open source  
28 software that they would otherwise normally be able to share due to the software's license. Any such  
29 agreement shall be void and unenforceable.

30 21-W:4 Mandatory Use of Proprietary Software Prohibited. No person in the state of New  
31 Hampshire shall be required to use proprietary software for any interaction with the government,

1 including but not limited to: the filing or payment of taxes, remote appearance for court proceedings,  
2 the taking of standardized tests or the completion of coursework by school students, applying for or  
3 receiving unemployment benefits, or other similar benefits, unless the government agency has  
4 determined that the proprietary software is the only means available for the required interaction. In  
5 such cases, the agency shall post a notice of its determination and the use of proprietary software on  
6 the agency's website.

7 21-W:5 Proprietary Software on State Websites. No person in the state of New Hampshire shall  
8 be required to allow the execution of proprietary javascript in their browser when visiting websites  
9 administered by the state of New Hampshire. The department of information technology shall verify  
10 that this is the case for each executive branch agency via the use of browser extensions of their  
11 choice that are designed to detect and block the execution of proprietary javascript in their browsers,  
12 and by confirming that no proprietary java script blocks the functioning of any third-party online  
13 archiving services that are attempting to archive state websites.

14 21-W:6 Data Portability. The state of New Hampshire recognizes a fundamental right to data  
15 portability held by computer users. The department of information technology shall enact a policy to  
16 ensure that, to the extent feasible, the right to data portability is protected and shall work with  
17 other agencies to adopt and implement similar policies.

18 21-W:7 Role of Law Enforcement. No member of law enforcement in the state of New  
19 Hampshire, or any of its political subdivisions, shall assist federal law enforcement in any  
20 investigation or prosecution of copyright claims or other claims of intellectual property crimes  
21 brought by makers of proprietary software against makers of competing free and open software  
22 projects.

23 21-W:8 Commission to Study the Use of Free Software by State Agencies.

24 I. There is established a commission to study the potential cost and feasibility of replacing  
25 all proprietary software used by state agencies with free software. The commission shall consider all  
26 relevant compliance and security concerns associated with making such a transition and develop a  
27 timeline for implementation.

28 II. The commission shall be comprised of the following members:

29 (a) Three members of the house of representatives, appointed by the speaker of the  
30 house of representatives.

31 (b) One member of the senate, appointed by the president of the senate.

32 (c) The commissioner of the department of information technology, or designee.

33 (d) The commissioner of the department of administrative services, or designee.

34 III. Legislative members of the commission shall receive mileage at the legislative rate when  
35 attending to the duties of the committee.

36 IV. The commission shall:

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(a) Explore the scope and application of free software, including copyleft licenses, in the public and private sector.

(b) Examine legal protection for copyleft licensees, including limits on noncompete clauses and presumptions in favor of copyleft licensees.

(c) Study the state's ability to develop and release open source software and consider ways to reduce the mandatory use of proprietary software.

(d) Develop a program and funding mechanism to provide legal assistance to developers of free software.

(e) Review and develop recommendations for the expansion of the statewide information policy on open government data standards in RSA 21-R:14.

V. The members of the commission shall elect a chairperson from among the members. The first meeting of the commission shall be called by the first-named house member. The first meeting of the commission shall be held within 45 days of the effective date of this section. Four members of the commission shall constitute a quorum.

VI. The commission shall submit an annual report its findings and any recommendations for proposed legislation to the speaker of the house of representatives, the president of the senate, the house clerk, the senate clerk, the governor, and the state library beginning on or before November 1, 2022. The report shall include estimated appropriation amounts necessary for all state agencies to complete the transition from proprietary software to free software.

3 New Paragraph; Department of Information Technology; Purchasing Policy; Consideration of Free and Open Source Software Required. Amend RSA 21-R:8-a by inserting after paragraph I the following new paragraph:

I-a. No agency shall purchase proprietary software unless the agency, in consultation with the department, determines that no viable free and open source software is available. No agency shall purchase machinery, computing hardware, or robots that require proprietary software unless the agency, in consultation with the department, determines that no viable alternative is available.

4 New Section; Criminal Code; Right to Examine Proprietary Source Code. Amend RSA 626 by inserting after section 8 the following new section:

626:9 Discovery; Right to Examine Proprietary Source Code. A defendant shall have the right to review the source code of any proprietary software used to generate evidence used against him or her in a criminal proceeding, in order to assess the reliability of such evidence.

5 Effective Date.

I. Section 4 of this act shall take effect January 1, 2023.

II. The remainder of this act shall take effect 60 days after its passage.