

Section 1 Header

2022 SESSION

22-2270.0
05/04

HOUSE BILL

[bill number]AN ACT **establishing a committee to study** free and open source software.

SPONSORS: [sponsors]

COMMITTEE: [committee]

ANALYSIS

This bill establishes a committee to study **free** and open source software.

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Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

Section 1 Header

2022 SESSION

22-2270.1
05/04

HOUSE BILL

[bill number]AN ACT **relative to the use of** free and open source software.

SPONSORS: [sponsors]

COMMITTEE: [committee]

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.

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Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

Section 2 Header

22-2270.0
05/04

STATE OF NEW HAMPSHIRE

*In the Year of Our Lord Two Thousand Twenty Two*AN ACT **establishing a committee to study** free and open source software.*Be it Enacted by the Senate and House of Representatives in General Court convened:*

1 1 Software Committee Established. There is established a committee to study the expanded use
2 of free and open source software. The committee shall be known as the "Securing Our Freedom To
3 Write And Read Everything" (SOFTWARE) committee.

4 I. The members of the committee shall be as follows:

5 (a) Three members of the house of representatives, appointed by the speaker of the
6 house of representatives.

7 (b) Three members of the senate, appointed by the president of the senate.

8 II. Members of the committee shall receive mileage at the legislative rate when attending to
9 the duties of the committee.

10 III. The committee shall solicit information and testimony from the department of
11 information technology and members of the public with experience and expertise in open source
12 software.

13 IV. The committee shall study free and open source software, including, the use and
14 application of copyleft licenses, which allow users to freely use, copy, modify, and distribute works
15 provided that all derivative works offer the same freedom to users. The committee shall:

16 (a) Explore the scope and application of copyleft licenses in the public and private sector.

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

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

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

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

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

29 VI. The committee shall report its findings and any recommendations for proposed
30 legislation to the speaker of the house of representatives, the president of the senate, the house
31 clerk, the senate clerk, the governor, and the state library on or before November 1, 2022.

Section 2 Header

22-2270.1
05/04

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:

CHAPTER 21-W

FREE AND OPEN SOURCE SOFTWARE

5 21-W:1 Definitions. In this chapter:

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

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

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

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

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

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

24 21-W:3 Non-disclosure Agreement. No employer in the state of New Hampshire shall use non-
25 disclosure agreements to prevent employees from sharing the source code of free and open source
26 software that they would otherwise normally be able to share due to the software's license. Any such
27 agreement shall be void and unenforceable.

28 21-W:4 Mandatory Use of Proprietary Software Prohibited. No person in the state of New
29 Hampshire shall be required to use proprietary software for any interaction with the government,
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1 2 Effective Date. This act shall take effect upon its passage.

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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: