

March 25, 2004

VIA FAX: (405) 521-5617

Senator Gilmer Capps
2300 N. Lincoln Blvd.,
Room 424A
Oklahoma City, OK 73105

Re: HB 1849, establishing a mandate for the use of Open Source Software (OSS) in Oklahoma's Public Administration

Dear Senator Capps:

The Initiative for Software Choice (ISC, www.softwarechoice.org) – a global coalition representing over 290 software companies and Information Technology trade associations – is writing to express our concern that HB 1849, as recently passed by the House would harm Oklahoma public administration, its citizens, and its information technology (IT) industry and workers because it will limit software choice presently available to the state of Oklahoma. As a result, the ISC—which itself is managed by the Computing Technology Industry Association (representing over 60 small-to-midsized IT member companies in Oklahoma) – urges that HB 1849 not be approved by your Subcommittee for further legislative consideration.

As written, HB 1849 prohibits the state of Oklahoma from purchasing customized software unless the source code is provided to the state agency. Source code can be thought of as the instructions that computers use to make a software program operate. Generally, commercial software companies view source code as an important proprietary asset. In most cases, commercial software vendors retain their source code and license copies of the software to its users.

We believe that current law, which would let procurement officers continue to make the decision on code acquisition on a case-by-case basis, is appropriate. By requiring state agencies to retain source code for all customized software purchases the state may inadvertently face higher costs for customized software procurement.

In other words, HB 1849 puts the state of Oklahoma in the business of managing software source code and the intellectual property related to that code whether or not it is Oklahoma's interest to do so. Public agencies should make procurement choices based on the specific situation at hand and determine the product that best suits their needs applying the same criteria to all products. The ISC recommends that agencies must avoid setting blanket policies that favor one development model over another.

Most of the software developers and software vendors in Oklahoma create or market proprietary software. They and their employees contribute to the state's tax base and deserve the opportunity to at least propose proprietary solutions that might ultimately be the best solution to meet the state's needs.

The ISC strongly supports the development and adoption of all kinds of software: be it open source software (OSS), hybrid or proprietary. But each has its place, its advantages, and disadvantages, which get fleshed out through open competition. For this reason, we believe that mandatory government regulations, which give preference to certain kinds of software, weaken the overall software marketplace, biasing the choice of viable software options available to public authorities. Only when all software options are available can the specific needs of each IT project be met, driven by a flexible range of factors such as cost, reliability, security, functionality and availability.

The ISC is aware of no barriers to unfettered software choice in Oklahoma. In fact, at this present time, the state of Oklahoma can rightfully choose any type of software/platform it wants for its IT needs. As such, no legal obstacles stop its public administrators from going into the market and getting the best solution for a given challenge.

If HB 1849 is fully implemented, the ISC believes that it will have a number of serious practical repercussions, such as:

- Disproportionately impacting Oklahoma small software companies and workers, which primarily develop and sell proprietary software solutions;
- Inflexibly locking-in OSS offerings without fair consideration to the merits of other competing options;
- Lost tax revenue that the state currently realizes from local commercial technology companies who will no longer be able to sell their products to the state;
- Wasting taxpayer dollars because fewer competitive options will be available; and reducing the efficacy of Oklahoma's public administration for its constituents because fewer competitive solutions will be available.

For these reasons, the ISC strongly urges you to reject HB 1849, seeing that it will not only reduce software choice for Oklahoma, but also harm Oklahoma's public administration, it's IT industry and workers, and your constituents.

HB 1849 is a choice Oklahoma does not ever have to make.

Yours sincerely,

Bob Kramer
Executive Director – ISC