the FOSS Act of 2007
(House Bill 1716)
Originally House Bill 5769 (13th Congress)

Drafting process, consultation

Refiled as House Bill 1716

No substantial changes except those on education
Developing local capacity and industry

Reducing imports, conserving foreign exchange

Enhancing national security

Reducing copyright infringement
Enabling localization
Increasing competition
Access to information
Encouraging cooperation
Mandates government to use and migrate to open standards, open formats & FOSS
Available to the general public
Consensus-driven process
Open decision making procedure
Standard published, freely available
Standards development organization

Vendor neutral, interoperability

No constraints

Problem with closed, proprietary formats
Published specification
Open standards
Open Document Format (ODF)
Importance of standard formats
Case of Google Video
Source code available

No fees for license, no restrictions

License allow modifications, redistribution, even individual components
Not discriminate

Can be used in conjunction with other FOSS

Technology neutral

Covered by FOSS license
Legal recognition

Mandate use of open standards, open formats and FOSS

Government research and development

pursued

methods
No single vendor lock-in
Preference Filipino-owned ICT company
Promotion in education
Private sector
No reasonably available FOSS

Existing widely used proprietary ICT

RAND license

extraordinary circumstances exceptions

exceptions
Interoperable and scalable with open standards

License most similar to FOSS

Existing systems to be retired or major enhancements
Amend Intellectual Property Code

Computer programs

Protocols that form part of open standards
3 years = 90% gov't and 65% country's IT professionals proficient in FOSS

5 years = 75% gov't systems open standards compliant and employ FOSS
CICT
Oversee implementation
Increase mandate
Office of FOSS Migration
agencies
Mandate and targets aggressive

Legal recognition – similar treatment with proprietary software

Open standards and formats
Problem with definition of FOSS

Not TCO but technology transfers / access to know-how

No violation of technological neutrality
Good afternoon. I would like to thank Rep. Teddy Casino for giving an insightful presentation on the FOSS Act of 2007 (otherwise known as House Bill 1716). Today, I will discuss the important elements and sections of the House Bill 1716. At the end, I will give my views on the proposed law.
The FOSS Act of 2007 was originally filed as House Bill 5769 during the 13th Congress. However, it was filed on the 3rd and last year of that Congress and at a time when there were other pressing issues like the CHA-CHA and the upcoming national and local elections.

I was privileged to have assisted the office of Rep. Teddy in the initial draft of the bill. The draft of the original bill underwent a number of significant changes and improvements before it was finally filed as a bill. Members of the FOSS community and other stakeholders were consulted. The bill also incorporated comments from Richard Stallman, the founder of the Free Software Foundation/Movement.

The 13th Congress bill was recently refiled in the 14th Congress as House Bill 1716. I notice that it has been enhanced although, except for the removal of the mandatory requirements imposed on education institutions to offer FOSS courses, no substantial changes have been introduced. The text of House Bill 1716 is very close to House Bill 5763. The requirements for education were removed because people felt that it would impinge on academic freedom.
House Bill 1716 is indeed radical legislation because it aims to change the way government procures and uses ICT. The explanatory note of House Bill 1716 is not as radically worded as the original bill. Gone are the strongly worded statements against proprietary software vendors. Instead of revolutionary statements, the explanatory note contains well-reasoned grounds why the government should use and adopt FOSS. These grounds are based on a study conducted by the International Open Source Network and the United Nations Development Programme. Since one is free to run, copy, modify and distribute FOSS, it is almost impossible to infringe on the copyright of FOSS. Even if your favorite neighborhood dibidi person sells FOSS CDs there's no infringement or piracy because such recopying even for financial gain is permitted under FOSS licenses.
FOSS inherent involves technology transfers or transfer of know-how. There is no restriction on access to the source code to learn how the program works or prohibition against creating derivative works.
This phrase summarizes what the FOSS Act of 2007 is all about. It requires that government must use open standards, open formats and FOSS in all its ICT systems.

It should be noted that FOSS legislation can be done in three ways:
(a) mandatory – all future procurement and migration for all legacy ICT systems
(b) only for prospective ICT systems
(c) if equal TCO – prefer FOSS

House Bill 1716 embodies the first form – complete and mandatory use of FOSS.

Since the bill mandates the use of these three things, it is essential to understand what is being mandated.
As defined by the bill, open standards are “standards, protocols, specifications and any other data formats” that meet all of the following criteria.
The use of open standards are important since it permits interoperability of ICT systems and it prevents vendor lock-in. Using close, proprietary formats can be risky. For example, look at MP3. Alcatel-Lucent is suing Microsoft and other IT companies for copyright infringement for using MP3 audio encoding patents. JPEG – manufacturers have to pay to use this format.
Open format is closely related to open standards. An example of an open format is ODF which is an approved ISO standard. It's interesting that Microsoft has seen the importance of a format being deemed an open standard. It tried to get ISO certification for its own Open Office XML format (but it was defeated). It knows that open standards are the future of applications and government around the world will require software to support open standards and formats.

For example, see what happened with Google Video. GV used a proprietary, closed standard to encode and play its videos. The problem is, Google bought YouTube and GV was a commercial failure so Google decided to close GV down. What happens now with the people who purchased videos from GV? They can no longer play them since GV is no more. This illustrates the problem with using standards and formats that are not open, which a single company controls. One cannot use them with any other systems. While it is highly unlikely, what will happen if Microsoft decides to close its Office business? After awhile, you can no longer have access to your files and other companies can be technically prevented from opening those files.
The bill states that FOSS must have all of the following criteria.
I added the last criteria. The only way to distinguish FOSS from other programs is to look at the license that covers them. FOSS is covered by a FOSS license. In general, a FOSS license guarantees the following four software freedoms: (1) freedom to run, freedom to copy, freedom to modify and freedom to redistribute. Just to emphasize the point, FOSS and proprietary software are technically the same except for the fact that FOSS is covered by a license that grants more rights to users. The fifth item is problematic and I will explain this later.

Examples of FOSS are Linux, Ubuntu, Open Office, Audacity, Firefox, etc. Examples of FOSS licenses: GNU GPLv3, BSD, Apache License, Mozilla Public License.
As I mentioned earlier, the bill aims to mandate the use of FOSS in government. It does so in a number of ways.

Legal recognition – FOSS is treated the same way as proprietary software. Removes any doubt as to the validity and legality of FOSS and FOSS licenses. Developers who use FOSS have had difficulty because FOSS was being discriminated against.

FOSS should be used in government research and development. This is related to the open content movement where proponents believe that government funded projects should be freely accessible by the public.
Vendor lock-in. One becomes a captured customer of a vendor and the longer one uses a vendor's products the more difficult it is to get out. Soon, one has no choice but to buy a vendor's product or upgrade even if it's not the best technology.

If all things being equal, preference given to Filipino ICT company. This espouses the Filipino first rule.

Encourage and not mandate educations institutions to offer FOSS courses. Government to help promote FOSS. Non-fiscal incentives and support to private sector to use FOSS.
There are exceptions to the mandatory requirement of using open standard, open formats and FOSS in government under so-called extraordinary circumstances. These circumstances are: FOSS not reasonably available (flash is de facto standard in web video); existing proprietary ICT systems; licenses that are reasonable and non-discriminatory;
But there are limits to these exceptions. Such proprietary systems must interoperate and must be scalable; proprietary license most similar to FOSS (less restrictive); upon retirement or major enhancement, use FOSS.
Software patents are a big threat to FOSS since, while proprietary software developers patent their software (at least in the US), FOSS developers normally do not do so. Thus, the development of FOSS can be railroaded by patent infringement claims like those of SCO and Microsoft. With respect to the SCO case, after years of litigation, SCO has filed for bankruptcy and the court has ruled that Novell not SCO owns the copyright over Linux. Indirectly, the court is saying that SCO has no claims against Linux.

The bill seeks to remove the threat of software patents by amending the IPC and explicitly stating that computer programs and its underlying algorithms and protocols are not patentable.
These are the targets sets by the bill which appear to be quite high.
These are the main implementing agencies. CICT given the responsibility to oversee implementation of the bill and has had its mandate and functions increased. The problem, however, is that the CICT has been reorganized into a toothless tiger. The bill requires the creation of the Office of FOSS Migration and lists down its functions.
The mandate, methods and targets of the bill are very aggressive. Shooting for the moon. However, as Rep, Teddy says, its better to have an strong law so the essential aspects remain can remain since it will be surely watered down by the legislative process. For me, the most important parts of the bill are these. Legal recognition. Places FOSS on a level playing field, especially in procurement. Similar to what was done for electronic documents and signatures under the E-Commerce Act. Adoption of open standards and formats is essential. Movement now towards open standards. Example, web, Internet, etc. based on open protocols. Minimum requirement of any government ICT procurement.
There is a minor problem with the definition of FOSS in section 3 no. 6. GPL cannot mix with BSD. Just remove it.

The key to the FOSS vs proprietary debate is not about what is cheaper or issues of TCO. It's about technology transfer or transfers of know-how. FOSS allows Filipino developers to use, learn from and build on technologies. That is not permitted under most closed software licenses which overly restrict the rights of users. In a knowledge-based economy, this is what we need. Microsoft has responded to FOSS by selling its products government at cheaper prices. Price is not enough since granting more freedoms to government is what is most needed.

Bias against proprietary software vendor, violates the principle of technological neutrality. Not true. This is legislation does not advocate for a particular technology. As I mentioned earlier, FOSS and proprietary programs are the same – except for the licenses that cover them (i.e., the rights they grant to users). FOSS is more free (grants more rights) than proprietary software. It's not about technology then but about the rights/licenses granted to government in using these technologies. This bill only sets the minimum rights that must be granted to government with respect to programs and ICT systems. By analogy – similar to generics law, generic drugs; or consumer protection laws that require a minimum warranty standards to consumers (with government as the consumer). There is nothing that prevents Microsoft from selling Windows to government even with this law in place. It just needs to change the its licensing agreement – grant more rights and less restrictions to government.
In you have any questions or comments, you can ask them now or you can reserve them for the Open Forum later.