

SUBJECT: Sale or lease of computer software by counties

COMMITTEE: County Affairs — favorable, without amendment

VOTE: 8 ayes — R. Lewis, Gutierrez, Chisum, Hamric, Kamel, G. Lewis, Muñoz, Wohlgemuth

0 nays

1 absent — Longoria

WITNESSES: For — Donald Lee, Conference of Urban Counties; Dennis Lindquist, Bexar County; Mark Mendez, Tarrant County Commissioners Court; Steve Jennings, Harris County

Against — None

DIGEST: HB 960 would permit a county to sell or license a computer software product or system developed by the county. A county could sell or license software developed for the county by a person under contract, unless the contract specifically prohibited such a sale. A county could market or contract to market the software product or system.

The bill would specify that the Open Records Act provisions governing charges for copies of records would not apply to software developed by a county.

A "computer software product or system" would include documentation of the product or system. The bill would take immediate effect if approved by two-thirds of the membership of each house.

SUPPORTERS SAY: Counties can spend a substantial amount of public funds to develop computer software yet be denied compensation for their endeavors when the software is released, usually in connection with open records requests.

Any person or company may request software and programs as public information. While an attorney general's open records decision (ORD 581) holds that information that has no significance other than its use as a tool

for the maintenance, manipulation or protection of public property (which would probably include most software) is not subject to the Open Records Act, that decision could be challenged in court.

Once a county releases a program (or the software falls into the hands of a private entity) that entity can sell the software or program for profit without compensating the county. This cheats taxpayers because counties are unfairly denied the ability to recoup the enormous costs of developing and customizing software programs — development costs that are financed with taxpayer money.

HB 960 would not impinge on open records laws. Access to public records by means of diskettes or other data-transfer methods would not be diminished or impeded by this bill. Because data and software can be transferred separately, requested data can be made available without allowing access to the software program. Nor would the bill raise costs for access to general records.

In 1993 the 73rd Legislature enacted HB 1408 by Puente which allows cities to sell or lease software they have developed. The City of San Antonio had developed software for its municipal courts system and an accounting firm obtained a copy of the software and sold it to the City of Houston for a sizeable profit. HB 960 would protect counties and county taxpayers from the same kind of problem San Antonio suffered.

Taxpayers should not have to subsidize the profits of businesses that take advantage of open records laws or other opportunities to obtain county-developed software and sell it. When software is developed at taxpayer expense, taxpayers should reap any return on that asset.

This bill would pose no threat to software developers in the private sector. County governments, which have no real marketing capability, are unlikely to pose any kind of real competition for commercial software developers.

**OPPONENTS
SAY:**

Public entities funded by taxpayer dollars should not be permitted to compete with the private sector by selling software. A better way to deal with the problem of others selling county software would be to simply prohibit the release of all software programs through the Open Records Act.

In fact, counties can already refuse to release most kinds of software, due to a 1990 attorney general's Open Record's Decision (ORD 581) that held that information that has no significance other than its use as a tool for the maintenance, manipulation or protection of public property (which would include most software) is not subject to the Open Records Act.

**OTHER
OPPONENTS
SAY:**

The bill should specify that the county may sell and license only software and that any data or information associated with that software must still be accessible by open records requests. Those requests should still fall under Government Code provisions that provide that an excessive amount may not be charged for reproduction of public records.

NOTES:

Rep. Puente said he intends to offer a floor amendment specifying that the cost of open records requests would still be governed by Government Code, chapter 552, subchapter F, (which governs the cost of making copies of public records) without taking into account the cost of software development and other software-related costs.