

**AMENDMENT IN THE NATURE OF A SUBSTITUTE
TO H.R. 9566
OFFERED BY MR. COMER OF KENTUCKY**

Strike all after the enacting clause and insert the following:

1 SEC. 1. SHORT TITLE.

2 This Act may be cited as the “Source code Harmoni-
3 zation And Reuse in Information Technology Act” or the
4 “SHARE IT Act”.

5 SEC. 2. DEFINITIONS.

6 In this Act:

7 (1) AGENCY.—The term “agency” has the
8 meaning given that term in section 3502 of title 44,
9 United States Code.

10 (2) APPROPRIATE CONGRESSIONAL COMMIT-
11 TEES.—The term “appropriate congressional com-
12 mittees” means the Committee on Homeland Secu-
13 rity and Governmental Affairs of the Senate and the
14 Committee on Oversight and Accountability of the
15 House of Representatives.

16 (3) CUSTOM-DEVELOPED CODE.—The term
17 “custom-developed code”—

18 (A) means source code that is—

1 (i) produced in the performance of a
2 contract with an agency or is otherwise ex-
3 clusively funded by the Federal Govern-
4 ment; or

5 (ii) developed by a Federal employee
6 as part of the official duties of the em-
7 ployee;

8 (B) includes—

9 (i) source code, or segregable portions
10 of source code, for which the Federal Gov-
11 ernment could obtain unlimited rights
12 under part 27 of the Federal Acquisition
13 Regulation or any relevant supplemental
14 acquisition regulations of an agency; and

15 (ii) source code written for a software
16 project, module, plugin, script, middleware,
17 or application programming interface; and
18 (C) does not include—

19 (i) source code that is solely explor-
20 atory or disposable in nature, including
21 source code written by a developer experi-
22 menting with a new language or library; or

23 (ii) commercial computer software,
24 commercial off-the-shelf software, or con-
25 figuration scripts for such software.

1 (4) FEDERAL EMPLOYEE.—The term “Federal
2 employee” has the meaning given the term in section
3 2105(a) of title 5, United States Code.

4 (5) METADATA.—The term “metadata”, with
5 respect to custom-developed code—

6 (A) has the meaning given that term in
7 section 3502 of title 44, United States Code;
8 and

9 (B) includes—

10 (i) information on whether the cus-
11 tom-developed code was—

12 (I) produced pursuant to a con-
13 tract; or

14 (II) shared in a public or private
15 repository;

16 (ii) any contract number under which
17 the custom-developed code was produced;
18 and

19 (iii) any hyperlink to the repository in
20 such the code was shared.

21 (6) PRIVATE REPOSITORY.—The term “private
22 repository” means a software storage location—

23 (A) that contains source code, documenta-
24 tion, configuration scripts, as appropriate, revi-
25 sion history, and other files; and

1 (B) access to which is restricted to only
2 authorized users.

3 (7) PUBLIC REPOSITORY.—The term “public
4 repository” means a software storage location—

5 (A) that contains source code, documenta-
6 tion, configuration scripts, as appropriate, revi-
7 sion history, and other files; and

8 (B) access to which is open to the public.

9 (8) SOFTWARE.—The term “software” has the
10 meaning given the term “computer software” in sec-
11 tion 2.101 of title 48, Code of Federal Regulations,
12 or any successor regulation.

13 (9) SOURCE CODE.—The term “source code”
14 means a collection of computer commands written in
15 a computer programming language that a computer
16 can execute as a piece of software.

17 **SEC. 3. SOFTWARE REUSE.**

18 (a) SHARING.—Not later than 210 days after the
19 date of enactment of this Act, the head of each agency
20 shall ensure that the custom-developed code of the agency
21 and other key technical components of the code (including
22 documentation, data models, schemas, metadata, architec-
23 ture designs, configuration scripts, and artifacts required
24 to develop, build, test, and deploy the code) of the code
25 are—

1 (1) stored at not less than 1 public repository
2 or private repository;

3 (2) accessible to Federal employees via proce-
4 dures developed under subsection (d)(1)(A)(ii)(III);
5 and

6 (3) owned by the agency.

7 (b) SOFTWARE REUSE RIGHTS IN PROCUREMENT
8 CONTRACTS.—The head of an agency that enters into a
9 contract for the custom development of software for use
10 by the agency shall acquire and exercise rights sufficient
11 to enable the governmentwide access to, sharing of, use
12 of, and modification of any custom-developed code created
13 in the development of such software.

14 (c) DISCOVERY.—Not later than 210 days after the
15 date of enactment of this Act, the head of each agency
16 shall make metadata created on or after such date for the
17 custom-developed code of the agency publicly accessible.

18 (d) ACCOUNTABILITY MECHANISMS.—

19 (1) AGENCY CIOS.—Not later than 180 days
20 after the date of enactment of this Act, the Chief In-
21 formation Officer of each agency, in consultation
22 with the Chief Acquisition Officer, or similar official,
23 of the agency and the Federal Chief Information Of-
24 ficer, shall develop an agency-wide policy that—

1 (A) implements the requirements of this
2 Act, including—

3 (i) ensuring that custom-developed
4 code follows the best practices established
5 by the Director of the Office and Manage-
6 ment and Budget under paragraph (3) for
7 operating repositories and version control
8 systems to keep track of changes and to
9 facilitate collaboration among multiple de-
10 velopers; and

11 (ii) managing the sharing of custom-
12 developed code under subsection (b), and
13 the public accessibility of metadata under
14 subsection (c), including developing—

15 (I) procedures to determine
16 whether any custom-developed code
17 meets the conditions under section
18 4(b) for an exemption under this Act;

19 (II) procedures for making
20 metadata for custom-developed code
21 publicly accessible pursuant to sub-
22 section (c);

23 (III) procedures for Federal em-
24 ployees to gain access to public reposi-
25 tories and private repositories that

1 contain custom developed source code;
2 and

3 (IV) standardized reporting prac-
4 tices across the agency to capture key
5 information relating to a contract
6 under which custom-developed source
7 code was produced for reporting sta-
8 tistics about the contract; and

9 (B) corrects or amends any policies of the
10 agency that are inconsistent with the require-
11 ments of this Act.

12 (2) ADMINISTRATOR OF THE OFFICE OF ELEC-
13 TRONIC GOVERNMENT.—

14 (A) MINIMUM STANDARD REPORTING RE-
15 QUIREMENTS.—Not later than 120 days after
16 the date of enactment of this Act, the Adminis-
17 trator of the Office of Electronic Government
18 shall establish minimum standard reporting re-
19 quirements for the Chief Information Officers
20 of agencies, which shall include information re-
21 lating to—

22 (i) measuring the frequency of reuse
23 of code, including access and modification
24 under subsection (b);

1 (ii) whether the shared code is main-
2 tained;

3 (iii) whether there is a feedback mech-
4 anism for improvements to or community
5 development of the shared code; and

6 (iv) the number and circumstances of
7 all exemptions granted under section
8 4(a)(2).

9 (B) REPORTING REQUIREMENT.—

10 (i) REQUIREMENT.—Not later than 1
11 year after the date of the enactment of this
12 Act, and annually thereafter, the Adminis-
13 trator of the Office of Electronic Govern-
14 ment shall publish on a centralized website
15 a report on the implementation of this Act
16 that includes—

17 (I) a complete list of all exemp-
18 tions granted under section 4(a)(2);
19 and

20 (II) information showing whether
21 each agency has updated the acquisi-
22 tion and other policies of the agency
23 to be compliant with this Act.

24 (ii) OPEN GOVERNMENT DATA
25 ASSET.—The report under clause (i) shall

1 be maintained as an open Government
2 data asset (as defined in section 3502 of
3 title 44, United States Code).

4 (3) GUIDANCE.—The Director of the Office of
5 Management and Budget shall issue guidance, con-
6 sistent with the purpose of this Act, that establishes
7 best practices and uniform procedures across agen-
8 cies for the purposes of implementing this sub-
9 section.

10 **SEC. 4. EXEMPTIONS.**

11 (a) IN GENERAL.—

12 (1) AUTOMATIC.—

13 (A) IN GENERAL.—This Act shall not
14 apply to classified source code or source code
15 developed primarily for use in a national secu-
16 rity system (as defined in section 11103 of title
17 40, United States Code).

18 (B) NATIONAL SECURITY.—An exemption
19 from the requirements under section 3 shall
20 apply to classified source code or source code
21 developed—

22 (i) primarily for use in a national se-
23 curity system (as defined in section 11103
24 of title 40, United States Code); or

1 (ii) by an agency, or part of an agen-
2 cy, that is an element of the intelligence
3 community (as defined in section 3(4) of
4 the National Security Act of 1947 (50
5 U.S.C. 3003(4)).

6 (C) FREEDOM OF INFORMATION ACT.—An
7 exemption from the requirements under section
8 3 shall apply to source code the disclosure of
9 which is exempt under section 552(b) of title 5,
10 United States Code (commonly known as the
11 “Freedom of Information Act”).

12 (2) DISCRETIONARY.—

13 (A) EXEMPTION AND GUIDANCE.—

14 (i) IN GENERAL.—The Chief Informa-
15 tion Officer of an agency, in consultation
16 with the Federal Privacy Council, or any
17 successor thereto, may exempt from the re-
18 quirements of section 3 any source code for
19 which a limited exemption described in
20 subparagraph (B) applies.

21 (ii) GUIDANCE REQUIRED.—The Fed-
22 eral Privacy Council shall provide guidance
23 to the Chief Information Officer of each
24 agency relating to the limited exemption
25 described in subparagraph (B)(ii) to en-

1 sure consistent application of this para-
2 graph across agencies.

3 (B) LIMITED EXEMPTIONS.—The limited
4 exemptions described in this paragraph are the
5 following:

6 (i) The head of the agency is prohib-
7 ited from providing the source code to an-
8 other individual or entity under another
9 Federal law or regulation, including
10 under—

11 (I) the Export Administration
12 Regulations;

13 (II) the International Traffic in
14 Arms Regulations;

15 (III) the regulations of the
16 Transportation Security Administra-
17 tion relating to the protection of Sen-
18 sitive Security Information; and

19 (IV) the Federal laws and regula-
20 tions governing the sharing of classi-
21 fied information not covered by the
22 exemption in paragraph (1).

23 (ii) The sharing or public accessibility
24 of the source code would create an identifi-
25 able risk to the privacy of an individual.

1 (b) REPORT REQUIRED.—

2 (1) IN GENERAL.—Not later than December 31
3 of each year, the Chief Information Officer of an
4 agency shall submit to the Administrator of the Of-
5 fice of Electronic Government a report of the source
6 code of the agency to which an exemption under
7 subsection (1) or (2) of subsection (a) applied dur-
8 ing the fiscal year ending on September 30 of that
9 year with a brief narrative justification of each ex-
10 emption.

11 (2) FORM.—The report under paragraph (1)
12 shall be submitted in unclassified form, with a clas-
13 sified annex as appropriate.

14 **SEC. 5. GAO REPORT.**

15 Not later than 2 years after the date of enactment
16 of this Act, the Comptroller General of the United States
17 shall submit to Congress a report that includes an assess-
18 ment of the implementation of this Act.

19 **SEC. 6. RULE OF CONSTRUCTION.**

20 Nothing in this Act may be construed as requiring
21 the disclosure of information or records that are exempt
22 from public disclosure under section 552 of title 5, United
23 States Code (commonly known as the “Freedom of Infor-
24 mation Act”).

1 **SEC. 7. APPLICATION.**

2 This Act shall apply to custom-developed code that
3 is developed or revised—

4 (1) by a Federal employee not less than 180
5 days after the date of enactment of this Act; or

6 (2) under a contract awarded pursuant to a so-
7 licitation issued not less than 180 days after the
8 date of enactment of this Act.

9 **SEC. 8. REVISION OF FEDERAL ACQUISITION REGULATION.**

10 Not later than one year after the date of enactment
11 of this Act, the Federal Acquisition Regulation shall be
12 revised as necessary to implement the provisions of this
13 Act.

14 **SEC. 9. NO ADDITIONAL FUNDING.**

15 No additional funds are authorized to be appro-
16 priated to carry out this Act.

