Coalition for Fair Software Licensing

Hon. Thaddeus Claggett, Chair
Hon. Heidi Workman, Vice Chair
Hon. Ismail Mohamed, Ranking Member
Technology and Innovation Committee
Ohio House of Representatives
77 High Street, 13th Floor
Columbus, OH 43215

Re: In Support of Ohio House Bill Number 202

May 12, 2025

Dear Chair Claggett, Vice Chair Workman, Ranking Member Mohamed, and Members of the Committee,

I write to you today in support of HB 202, and specifically the proposed modifications to Sec. 9.27(B)(10) of the Ohio Revised Code. I do so on behalf of the Coalition for Fair Software Licensing, an organization comprised of American companies representing a cross-section of key industries, including healthcare, financial services, manufacturing, software, and cloud and cybersecurity providers.

The purpose of section (B)(10) is very simple: to ensure that a contract entered into by a state agency for the purchase of software designed to run on generally available server hardware does not artificially restrict the state's ability to deploy that software in the infrastructure environment that best fits its particular business needs.

The need for this legislation arises out of growing concern among IT leaders, procurement offices, and regulators around the country (and, in fact, the world) that restrictive licensing practices are leading to wasteful government spending, creating unnecessary cybersecurity vulnerabilities, and hindering technology modernization efforts. Restrictive licensing practices also lead to what's become known as "vendor-lock"— in which purchasers of software are effectively prevented from switching between technology service providers as circumstances necessitate.

Prior to 2019, the prevailing industry practice was known as "BYOL," or "bring-your-own-license." Under that policy, customers who purchased software licenses were free to deploy that software in the cloud or server environment that best met its own business needs. The policy was a good one— it encouraged greater interoperability and vendor diversification, which in turn benefits cybersecurity.

However, in 2019, one large legacy software provider instituted a modification to its licensing terms— out of no particular technical necessity— restricting where its software could be run. This change significantly hindered customers' ability to use on-premises licenses on dedicated hosted cloud services

from providers like Amazon and Google without purchasing additional mobility rights, essentially forcing users to utilize their cloud services instead for dedicated hosting environments.

Indeed, the issue has generated notable interest at the federal level.

- In November of 2024, the Federal Trade Commission announced that it was launching a broad investigation into one legacy provider's software licensing practices in its cloud business.
- In December of 2024, the House of Representatives passed the Strengthening Agency Management and Oversight of Software Assets (SAMOSA) Act. The bill would direct federal agencies to assess their current software inventory and management of contracts and software licenses. Agencies then must develop plans to consolidate their software licenses and develop mitigation strategies to reduce software license restrictions.
- Amendment 2167 of the National Defense Authorization Act for the 2023 Fiscal Year required the Comptroller General to investigate the impact of restrictive software licensing practices on the DoD, stating: *"The committee has observed how restrictive licensing practices can have the effect of limiting customer choice and increasing cost when customers are procuring one or more cloud services. These restrictive software licensing practices often apply to software widely adopted by the Department of Defense, and the committee is concerned that the Department of Defense may not have an accurate approach to accounting for the costs associated with restrictive licensing practices."*
- In 2024, the Government Accountability Office issued a report recommending federal agencies implement policies to lessen the effect of restrictive software practices. It stated: *"Federal agencies must move their data and software to the cloud when possible. But software licenses and restrictive vendor practices can limit or prevent such efforts. For example, some vendors charge extra fees to use their software with third-party cloud providers. Five agencies we interviewed said restrictive practices generally affected the cost of cloud services or their choice of cloud providers."*

Numerous studies have highlighted the fiscal impacts of restrictive software licensing practices. A 2023 report by Michael Garland titled "Vendor Lock and Lack of Competition in the Government's Software Estate" found that the two largest software companies in the world— Microsoft and Oracle— received as much as 30% of their government contracts without meaningful competition, "and likely much more." Garland wrote, "In one prime example of vendor-lock, the government spent $112 million more to buy Microsoft Office than Google Workspace in order to avoid perceived costs to switch." Another study that same year by Frédéric Jenny— a former Judge on the French Supreme Court, and Professor Emeritus of Economics at Paris Business ESSEC— was entitled, "Unfair Software Licensing: a quantification of the cost for cloud customers." Jenny wrote that "an additional overcharge of €1 billion, relating to licensing surcharges imposed on non-Azure deployments of SQL Server, may further be attributed to the policy change."

The policy change Jenny describes can still be found today on the software provider's own public website. How do we know that provision was unnecessary? Because the software provider allowed for this type of software license portability prior to 2019, and that it can and does today grant waivers— at its sole discretion— allowing customers under certain circumstances relief from these restrictions. Moreover, the change only applies to that legacy provider's largest cloud competitors— not to any smaller cloud

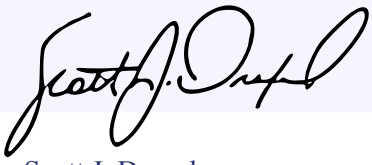
provider. The true intent of the change in terms appears to have been to leverage its market share in one product vertical to sell additional goods and services in another— regardless of whether the customer needed or wanted them— thereby gaining them an advantage in the increasingly competitive cloud computing market.

At its core, HB 202 is a technology procurement good housekeeping bill. It is narrowly-tailored. It applies only to future public procurement contracts, and does not implicate any contracts already in effect. It does not constrain the state in its choice of software *or* of cloud provider, instead empowering state agencies to select the software vendors and hardware environments that best meet their business needs. In fact, it doesn't require anything at all! It incentivizes vendor diversification, which strengthens cybersecurity. Section (B)(10) does not ask the state to pick winners and losers— rather, it fosters healthy competition in the public cloud, which lowers cost to taxpayers. That's a critical facet of free enterprise: greater competition in the marketplace lowers cost, and it fosters innovation. It prioritizes the needs of the state over the preference of the software vendor.

Fair software licensing language like that contained in HB 202 has been enacted in 5 states— Missouri, Colorado, New Hampshire, Illinois, and Indiana— and is currently pending before multiple states throughout the country. It has been endorsed by technology industry groups including the Coalition for Fair Software Licensing, NetChoice, the Computer Communications Industry Association, and the Alliance for Digital Innovation.

Once more, we'd like to thank you for your willingness to consider this bill. Please consider our group at your disposal to provide any additional information that would be helpful in your deliberations.

Sincerely,



Scott J. Drexel
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