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LEGISLATIVE ACTION

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| Senate | . | House |
| Comm: RCS | . | |
| 04/03/2013 | . | |
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The Committee on Community Affairs (Latvala) recommended the following:

Senate Amendment (with title amendment)

Delete lines 245 - 427

and insert:

(1) For purposes of this section, the term:

(a) "Defect" means:

1. Any failure, fault, or flaw in an electronic or electromechanical voting system approved pursuant to s. 101.5605 which results in nonconformance with the standards in a manner that affects the timeliness or accuracy of the casting or counting of ballots; or

2. Any failure or inability of the voting system



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13 manufacturer or vendor to make available or provide approved
14 replacements of hardware or software to the counties that have
15 purchased the approved voting system, the unavailability of
16 which results in the system's nonconformance with the standards
17 in a manner that affects the timeliness or accuracy of the
18 casting or counting of ballots.

19 (b) "Standards" refers to the requirements in ss. 101.5606
20 and 101.56062 under which a voting system was approved for use
21 in the state.

22 (c) "Vendor" means a person who submits or previously
23 submitted a voting system that was approved by the Department of
24 State in accordance with s. 101.5605, or a person who enters
25 into a contract for the sale or lease of a voting system to any
26 county, or that previously entered into such a contract that has
27 not expired.

28 (2) (a) No later than December 31, 2013, and, thereafter, on
29 January 1 of every odd-numbered year, each vendor shall file a
30 written disclosure with the department identifying any known
31 defect in the voting system or the fact that there is no known
32 defect, the effect of any defect on the operation and use of the
33 approved voting system, and any known corrective measures to
34 cure a defect, including, but not limited to, advisories and
35 bulletins issued to system users.

36 (b) Implementation of corrective measures approved by the
37 department which enable a system to conform to the standards and
38 ensure the timeliness and accuracy of the casting and counting
39 of ballots constitutes a cure of a defect.

40 (c) If a vendor becomes aware of the existence of a defect,
41 he or she must file a new disclosure with the department as



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42 provided in paragraph (a) within 30 days after the date the
43 vendor determined or reasonably should have determined that the
44 defect existed.

45 (d) If a vendor discloses to the department that a defect
46 exists, the department may suspend all sales or leases of the
47 voting system in the state and may suspend the use of the system
48 in any election in the state. The department shall provide
49 written notice of any such suspension to each affected vendor
50 and supervisor of elections. If the department determines that
51 the defect no longer exists, the department shall lift the
52 suspension and provide written notice to each affected vendor
53 and supervisor of elections.

54 (e) If a vendor fails to file a required disclosure for a
55 voting system previously approved by the department, that system
56 may not be sold, leased, or used for elections in the state
57 until it has been submitted for examination and approval and
58 adopted for use pursuant to s. 101.5605. The department shall
59 provide written notice to all supervisors of elections that the
60 system is no longer approved.

61 (3) (a) If the department has reasonable cause to believe a
62 voting system approved pursuant to s. 101.5605 contains a defect
63 either before, during, or after an election which has not been
64 disclosed pursuant to subsection (2), the department may
65 investigate whether the voting system has a defect.

66 (b) The department may initiate an investigation pursuant
67 to paragraph (a) on its own initiative or upon the written
68 request of the supervisor of elections of a county that
69 purchased or leased a voting system that contains the alleged
70 defect.



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71 (c) Upon initiating an investigation, the department shall
72 provide written notice to the vendor and all of the supervisors
73 of elections.

74 (4) (a) If the department determines by a preponderance of
75 the evidence that a defect exists in the voting system, or that
76 a vendor failed to timely disclose a defect pursuant to
77 subsection (2), the department shall provide written notice to
78 the affected vendor and supervisors of elections.

79 (b) A vendor entitled to receive notice pursuant to
80 paragraph (a) shall, within 10 days, file a written response to
81 the department which:

82 1. Denies that the alleged defect exists or existed as
83 alleged by the department or that the vendor failed to timely
84 disclose a defect, and sets forth the reasons for such denial;
85 or

86 2. Admits that the defect exists or existed as alleged by
87 the department or that the vendor failed to timely disclose a
88 defect.

89 (c) If the defect has been cured, the vendor shall provide
90 an explanation of how the defect was cured.

91 (d) If the defect has not been cured, the vendor shall
92 inform the department whether the defect can be cured and shall
93 provide the department with a plan for curing the defect. If the
94 defect can be cured, the department shall establish a timeframe
95 within which to cure the defect.

96 (5) If after receiving a response from the vendor, the
97 department determines that a defect does not exist or has been
98 cured within the timeframe established by the department, the
99 department shall take no further action.



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100 (6) If the department determines that: a vendor failed to
101 timely disclose a defect; or that a defect exists and a vendor
102 has not filed a written response or has failed to cure within
103 the timeframe established by the department, or if the defect
104 cannot be cured, the department shall impose a civil penalty of
105 \$25,000 for the defect plus an amount equal to the actual costs
106 incurred by the department in conducting the investigation.

107 (7) If the department finds that a defect existed:

108 (a) The department may suspend all sales and leases of the
109 voting system and may suspend its use in any county in the
110 state. The department shall provide written notice of the
111 suspension to each affected vendor and supervisor of elections.

112 (b) If the department determines that a defect no longer
113 exists in a voting system that has been suspended from use
114 pursuant to paragraph (a), the department shall lift the
115 suspension and authorize the sale, lease, and use of the voting
116 system in any election in the state. The department shall
117 provide written notice that the suspension has been lifted to
118 each affected vendor and supervisor of elections.

119 (c) If the defect cannot be cured, the department may
120 disapprove the voting system for use in elections in the state.
121 The department shall provide written notice to all supervisors
122 of elections that the system is no longer approved. After
123 approval of a system has been withdrawn pursuant to this
124 paragraph, the system may not be sold, leased, or used in
125 elections in the state until it has been submitted for
126 examination and approval and adopted for use pursuant to s.
127 101.5605.

128 (d) Any vendor against whom a civil penalty was imposed



129 under this section may not submit a voting system for approval
130 by the Department of State in accordance with s. 101.5605 or
131 enter into a contract for sale or lease of a voting system in
132 the state until the civil penalties have been paid and the
133 department provides written confirmation to the supervisors of
134 elections of the payment.

135 (8) The department shall prepare a written report of any
136 investigation conducted pursuant to this section.

137 (9) The authority of the department under this section is
138 in addition to, and not exclusive of, any other authority
139 provided by law.

140 (10) All proceedings under this section are exempt from
141 chapter 120.

142
143 ===== T I T L E A M E N D M E N T =====

144 And the title is amended as follows:

145 Delete lines 22 - 27

146 and insert:

147 notice; creating s. 101.56065, F.S.; providing
148 definitions; requiring a vendor to file a written
149 disclosure with the department; providing requirements
150 for the disclosure; providing what constitutes a cure
151 of a defect; requiring a vendor to file a new
152 disclosure with the department if a vendor becomes
153 aware of a defect within a specified period;
154 authorizing the department to suspend all sales or
155 leases or use in an election of a defective voting
156 system; authorizing the