



94TH GENERAL ASSEMBLY

State of Illinois

2005 and 2006

SB1683

Introduced 2/24/2005, by Sen. Don Harmon

SYNOPSIS AS INTRODUCED:

10 ILCS 5/18A-15
10 ILCS 5/23-15.1
10 ILCS 5/24C-2
10 ILCS 5/24C-12

Amends the Election Code. Provides that casting a provisional ballot in the incorrect precinct does not invalidate that ballot's votes. Requires the State Board of Elections to adopt rules for the counting of those votes. Provides that the provisional voter's affidavit serves as a change of address request for registration purposes if it bears an address different from the election authority's record. With respect to electronic voting systems, removes the requirement that a vendor's computer codes must be kept confidential. Makes those codes public records but permits a vendor to retain copyrights. With respect to reviewing the computer codes of electronic voting systems, requires that the State Board of Elections shall provide sufficiently qualified human and capital resources for conducting reviews and that the resources shall have no affiliation with voting systems vendors. With respect to audit trails of direct recording electronic voting systems, requires that all test results, documentation, and other records used to plan, execute, and review the results of testing and verification shall be public records. With respect to direct recording electronic voting systems, removes the option that the permanent paper record of a vote may be self-contained within the voting device and requires that the paper record be printed in a clear and readily readable format that can be easily reviewed by the voter.

LRB094 11121 JAM 41754 b

1 AN ACT concerning elections.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

4 Section 5. The Election Code is amended by changing
5 Sections 18A-15, 23-15.1, 24C-2, and 24C-12 as follows:

6 (10 ILCS 5/18A-15)

7 Sec. 18A-15. Validating and counting provisional ballots.

8 (a) The county clerk or board of election commissioners
9 shall complete the validation and counting of provisional
10 ballots within 14 calendar days of the day of the election. The
11 county clerk or board of election commissioners shall have 7
12 calendar days from the completion of the validation and
13 counting of provisional ballots to conduct its final canvass.
14 The State Board of Elections shall complete within 31 calendar
15 days of the election or sooner if all the returns are received,
16 its final canvass of the vote for all public offices.

17 (b) If a county clerk or board of election commissioners
18 determines that all of the following apply, then a provisional
19 ballot is valid and shall be counted as a vote:

20 (1) The provisional voter cast the provisional ballot
21 in the correct precinct based on the address provided by
22 the provisional voter. Votes on a provisional ballot cast
23 in the incorrect precinct that meets the other requirements
24 of this subsection shall be valid and counted for all
25 offices that are voted on in the resident precinct of the
26 voter that are present on the ballot, and the provisional
27 voter's affidavit shall serve as a change of address
28 request by that voter for registration purposes if it bears
29 an address different from that in the records of the
30 election authority;

31 (2) The affidavit executed by the provisional voter
32 pursuant to subsection (b) (2) of Section 18A-10 is properly

1 executed; and

2 (3) the provisional voter is a registered voter based
3 on information available to the county clerk or board of
4 election commissioners provided by or obtained from any of
5 the following:

6 i. the provisional voter;

7 ii. an election judge;

8 iii. the statewide voter registration database
9 maintained by the State Board of Elections;

10 iv. the records of the county clerk or board of
11 election commissioners' database; or

12 v. the records of the Secretary of State.

13 (c) With respect to subsection (b) (3) of this Section, the
14 county clerk or board of election commissioners shall
15 investigate whether each of the 5 types of information is
16 available and record whether this information is or is not
17 available. If one or more types of information is available,
18 then the county clerk or board of election commissioners shall
19 obtain all relevant information from all sources identified in
20 subsection (b) (3). The county clerk or board of election
21 commissioners shall use any information it obtains as the basis
22 for determining the voter registration status of the
23 provisional voter. If a conflict exists among the information
24 available to the county clerk or board of election
25 commissioners as to the registration status of the provisional
26 voter, then the county clerk or board of election commissioners
27 shall make a determination based on the totality of the
28 circumstances. In a case where the above information equally
29 supports or opposes the registration status of the voter, the
30 county clerk or board of election commissioners shall decide in
31 favor of the provisional voter as being duly registered to
32 vote. If the statewide voter registration database maintained
33 by the State Board of Elections indicates that the provisional
34 voter is registered to vote, but the county clerk's or board of
35 election commissioners' voter registration database indicates
36 that the provisional voter is not registered to vote, then the

1 information found in the statewide voter registration database
2 shall control the matter and the provisional voter shall be
3 deemed to be registered to vote. If the records of the county
4 clerk or board of election commissioners indicates that the
5 provisional voter is registered to vote, but the statewide
6 voter registration database maintained by the State Board of
7 Elections indicates that the provisional voter is not
8 registered to vote, then the information found in the records
9 of the county clerk or board of election commissioners shall
10 control the matter and the provisional voter shall be deemed to
11 be registered to vote. If the provisional voter's signature on
12 his or her provisional ballot request varies from the signature
13 on an otherwise valid registration application solely because
14 of the substitution of initials for the first or middle name,
15 the election authority may not reject the provisional ballot.

16 (d) In validating the registration status of a person
17 casting a provisional ballot, the county clerk or board of
18 election commissioners shall not require a provisional voter to
19 complete any form other than the affidavit executed by the
20 provisional voter under subsection (b) (2) of Section 18A-5. In
21 addition, the county clerk or board of election commissioners
22 shall not require all provisional voters or any particular
23 class or group of provisional voters to appear personally
24 before the county clerk or board of election commissioners or
25 as a matter of policy require provisional voters to submit
26 additional information to verify or otherwise support the
27 information already submitted by the provisional voter. The
28 provisional voter may, within 2 calendar days after the
29 election, submit additional information to the county clerk or
30 board of election commissioners. This information must be
31 received by the county clerk or board of election commissioners
32 within the 2-calendar-day period.

33 (e) If the county clerk or board of election commissioners
34 determines that subsection (b) (1), (b) (2), or (b) (3) does not
35 apply, then the provisional ballot is not valid and may not be
36 counted. The provisional ballot envelope containing the ballot

1 cast by the provisional voter may not be opened. The county
2 clerk or board of election commissioners shall write on the
3 provisional ballot envelope the following: "Provisional ballot
4 determined invalid."

5 (f) If the county clerk or board of election commissioners
6 determines that a provisional ballot is valid under this
7 Section, then the provisional ballot envelope shall be opened.
8 The outside of each provisional ballot envelope shall also be
9 marked to identify the precinct and the date of the election.

10 (g) The provisional ballots determined to be valid shall be
11 added to the vote totals for the precincts from which they were
12 cast in the order in which the ballots were opened. The county
13 clerk or board of election commissioners may, in the
14 alternative, create a separate provisional-voter precinct for
15 the purpose of counting and recording provisional ballots and
16 adding the recorded votes to its official canvass. The
17 validation and counting of provisional ballots shall be subject
18 to the provisions of this Code that apply to pollwatchers. If
19 the provisional ballots are a ballot of a punch card voting
20 system, then the provisional ballot shall be counted in a
21 manner consistent with Article 24A. If the provisional ballots
22 are a ballot of optical scan or other type of approved
23 electronic voting system, then the provisional ballots shall be
24 counted in a manner consistent with Article 24B.

25 (h) As soon as the ballots have been counted, the election
26 judges or election officials shall, in the presence of the
27 county clerk or board of election commissioners, place each of
28 the following items in a separate envelope or bag: (1) all
29 provisional ballots, voted or spoiled; (2) all provisional
30 ballot envelopes of provisional ballots voted or spoiled; and
31 (3) all executed affidavits of the provisional ballots voted or
32 spoiled. All provisional ballot envelopes for provisional
33 voters who have been determined not to be registered to vote
34 shall remain sealed. The county clerk or board of election
35 commissioners shall treat the provisional ballot envelope
36 containing the written affidavit as a voter registration

1 application for that person for the next election and process
2 that application. The election judges or election officials
3 shall then securely seal each envelope or bag, initial the
4 envelope or bag, and plainly mark on the outside of the
5 envelope or bag in ink the precinct in which the provisional
6 ballots were cast. The election judges or election officials
7 shall then place each sealed envelope or bag into a box, secure
8 and seal it in the same manner as described in item (6) of
9 subsection (b) of Section 18A-5. Each election judge or
10 election official shall take and subscribe an oath before the
11 county clerk or board of election commissioners that the
12 election judge or election official securely kept the ballots
13 and papers in the box, did not permit any person to open the
14 box or otherwise touch or tamper with the ballots and papers in
15 the box, and has no knowledge of any other person opening the
16 box. For purposes of this Section, the term "election official"
17 means the county clerk, a member of the board of election
18 commissioners, as the case may be, and their respective
19 employees.

20 (Source: P.A. 93-574, eff. 8-21-03.)

21 (10 ILCS 5/23-15.1)

22 Sec. 23-15.1. Production of ballot counting code ~~and~~
23 ~~attendance of witnesses~~. All voting-system vendors shall,
24 within 90 days after the adoption of rules or upon application
25 for voting-system approval, place in escrow all computer code
26 for its voting system with the State Board of Elections. All
27 computer codes placed in escrow with the State Board of
28 Elections shall be public records available for inspection at
29 the principal office of the State Board of Elections. This
30 requirement in no way prohibits vendors from charging any fees
31 for the initial distribution or ongoing maintenance of their
32 software. Notwithstanding any other provision of law to the
33 contrary, no action required under this Code shall invalidate
34 the copyright protections otherwise enjoyed by the owners or
35 authors of those codes. The State Board of Elections shall

1 promulgate rules to implement this Section. For purposes of
2 this Section, the term "computer code" includes, but is not
3 limited to, ballot counting source code, table structures,
4 modules, program narratives, and other human readable computer
5 instructions (whether compiled or not) used to count ballots.
6 ~~Any computer code submitted by vendors to the State Board of~~
7 ~~Elections shall be considered strictly confidential and the~~
8 ~~intellectual property of the vendors and shall not be subject~~
9 ~~to public disclosure under the Freedom of Information Act.~~

10 ~~The State Board of Elections shall determine which software~~
11 ~~components of a voting system it deems necessary to enable the~~
12 ~~review and verification of the computer. The State Board of~~
13 ~~Elections shall secure and maintain all proprietary computer~~
14 ~~codes in strict confidence and shall make a computer code~~
15 ~~available to authorized persons in connection with an election~~
16 ~~contest or pursuant to any State or federal court order.~~

17 ~~In an election contest, each party to the contest may~~
18 ~~designate one or more persons who are authorized to receive the~~
19 ~~computer code of the relevant voting systems. The person or~~
20 ~~persons authorized to receive the relevant computer code shall~~
21 ~~enter into a confidentiality agreement with the State Board of~~
22 ~~Elections and must exercise the highest degree of reasonable~~
23 ~~care to maintain the confidentiality of all proprietary~~
24 ~~information.~~

25 The State Board of Elections shall promulgate rules to
26 provide for the security, review, and verification of computer
27 codes. Verification includes, but is not limited to,
28 determining that the computer code corresponds to computer
29 instructions actually in use to count ballots. The State Board
30 of Elections shall hire, contract with, or otherwise provide
31 sufficiently qualified resources, both human and capital, to
32 conduct the reviews with the greatest possible expectation of
33 thoroughness, completeness, and effectiveness. The resources
34 shall be independent of and have no business, personal,
35 professional, or other affiliation with any of the system
36 vendors currently or prospectively supplying voting systems to

1 any county in the State of Illinois. Nothing in this Section
2 shall impair the obligation of any contract between a
3 voting-systems vendor and an election authority that provides
4 access to computer code that is equal to or greater than that
5 provided by this Section.

6 (Source: P.A. 93-574, eff. 8-21-03.)

7 (10 ILCS 5/24C-2)

8 Sec. 24C-2. Definitions. As used in this Article:

9 "Audit trail" or "audit capacity" means a continuous trail
10 of evidence linking individual transactions related to the
11 casting of a vote, the vote count and the summary record of
12 vote totals, but which shall not allow for the identification
13 of the voter. It shall permit verification of the accuracy of
14 the count and detection and correction of problems and shall
15 provide a record of each step taken in: defining and producing
16 ballots and generating related software for specific
17 elections; installing ballots and software; testing system
18 readiness; casting and tabulating ballots; and producing
19 images of votes cast and reports of vote totals. The record
20 shall incorporate system status and error messages generated
21 during election processing, including a log of machine
22 activities and routine and unusual intervention by authorized
23 and unauthorized individuals. Also part of an audit trail is
24 the documentation of such items as ballots delivered and
25 collected, administrative procedures for system security,
26 pre-election testing of voting systems, and maintenance
27 performed on voting equipment. All test results,
28 documentation, and other records used to plan, execute, and
29 record the results of the testing and verification shall be
30 made part of the public record and shall be freely available to
31 anyone. "Audit trail" or "audit capacity" ~~It~~ also means that
32 the voting system is capable of producing and shall produce
33 immediately after a ballot is cast a permanent paper record of
34 each ballot cast that shall be available as an official record
35 for any recount, redundant count, or verification or

1 retabulation of the vote count conducted with respect to any
2 election in which the voting system is used.

3 "Ballot" means an electronic audio or video display or any
4 other medium, including paper, used to record a voter's choices
5 for the candidates of their preference and for or against
6 public questions.

7 "Ballot configuration" means the particular combination of
8 political subdivision or district ballots including, for each
9 political subdivision or district, the particular combination
10 of offices, candidate names and public questions as it appears
11 for each group of voters who may cast the same ballot.

12 "Ballot image" means a corresponding representation in
13 electronic or paper form of the mark or vote position of a
14 ballot.

15 "Ballot label" or "ballot screen" means the display of
16 material containing the names of offices and candidates and
17 public questions to be voted on.

18 "Central counting" means the counting of ballots in one or
19 more locations selected by the election authority for the
20 processing or counting, or both, of ballots. A location for
21 central counting shall be within the territorial jurisdiction
22 of the election authority unless there is no suitable
23 tabulating equipment available within his territorial
24 jurisdiction. However, in any event a counting location shall
25 be within this State.

26 "Computer", "automatic tabulating equipment" or
27 "equipment" includes apparatus necessary to automatically
28 examine and count votes as designated on ballots, and data
29 processing machines which can be used for counting ballots and
30 tabulating results.

31 "Computer operator" means any person or persons designated
32 by the election authority to operate the automatic tabulating
33 equipment during any portion of the vote tallying process in an
34 election, but shall not include judges of election operating
35 vote tabulating equipment in the precinct.

36 "Computer program" or "program" means the set of operating

1 instructions for the automatic tabulating equipment that
2 examines, records, counts, tabulates, canvasses and prints
3 votes recorded by a voter on a ballot.

4 "Direct recording electronic voting system", "voting
5 system" or "system" means the total combination of mechanical,
6 electromechanical or electronic equipment, programs and
7 practices used to define ballots, cast and count votes, report
8 or display election results, maintain or produce any audit
9 trail information, identify all system components, test the
10 system during development, maintenance and operation, maintain
11 records of system errors and defects, determine specific system
12 changes to be made to a system after initial qualification, and
13 make available any materials to the voter such as notices,
14 instructions, forms or paper ballots.

15 "Edit listing" means a computer generated listing of the
16 names of each candidate and public question as they appear in
17 the program for each precinct.

18 "In-precinct counting" means the recording and counting of
19 ballots on automatic tabulating equipment provided by the
20 election authority in the same precinct polling place in which
21 those ballots have been cast.

22 "Marking device" means any device approved by the State
23 Board of Elections for marking a ballot so as to enable the
24 ballot to be recorded, counted and tabulated by automatic
25 tabulating equipment.

26 "Permanent paper record" means a paper record upon which
27 shall be printed in human readable form the votes cast for each
28 candidate and for or against each public question on each
29 ballot recorded in the voting system. Each permanent paper
30 record shall be printed by the voting device upon activation of
31 the marking device by the voter and shall contain a unique,
32 randomly assigned identifying number that shall correspond to
33 the number randomly assigned by the voting system to each
34 ballot as it is electronically recorded.

35 "Redundant count" means a verification of the original
36 computer count of ballots by another count using compatible

1 equipment or other means as part of a discovery recount,
2 including a count of the permanent paper record of each ballot
3 cast by using compatible equipment, different equipment
4 approved by the State Board of Elections for that purpose, or
5 by hand.

6 "Separate ballot" means a separate page or display screen
7 of the ballot that is clearly defined and distinguishable from
8 other portions of the ballot.

9 "Voting device" or "voting machine" means an apparatus that
10 contains the ballot label or ballot screen and allows the voter
11 to record his or her vote.

12 (Source: P.A. 93-574, eff. 8-21-03.)

13 (10 ILCS 5/24C-12)

14 Sec. 24C-12. Procedures for Counting and Tallying of
15 Ballots.

16 In an election jurisdiction where a Direct Recording
17 Electronic Voting System is used, the following procedures for
18 counting and tallying the ballots shall apply:

19 Before the opening of the polls, the judges of elections
20 shall assemble the voting equipment and devices and turn the
21 equipment on. The judges shall, if necessary, take steps to
22 activate the voting devices and counting equipment by inserting
23 into the equipment and voting devices appropriate data cards
24 containing passwords and data codes that will select the proper
25 ballot formats selected for that polling place and that will
26 prevent inadvertent or unauthorized activation of the
27 poll-opening function. Before voting begins and before ballots
28 are entered into the voting devices, the judges of election
29 shall cause to be printed a record of the following: the
30 election's identification data, the device's unit
31 identification, the ballot's format identification, the
32 contents of each active candidate register by office and of
33 each active public question register showing that they contain
34 all zero votes, all ballot fields that can be used to invoke
35 special voting options, and other information needed to ensure

1 the readiness of the equipment and to accommodate
2 administrative reporting requirements. The judges must also
3 check to be sure that the totals are all zeros in the counting
4 columns and in the public counter affixed to the voting
5 devices.

6 After the judges have determined that a person is qualified
7 to vote, a voting device with the proper ballot to which the
8 voter is entitled shall be enabled to be used by the voter. The
9 ballot may then be cast by the voter by marking by appropriate
10 means the designated area of the ballot for the casting of a
11 vote for any candidate or for or against any public question.
12 The voter shall be able to vote for any and all candidates and
13 public measures appearing on the ballot in any legal number and
14 combination and the voter shall be able to delete, change or
15 correct his or her selections before the ballot is cast. The
16 voter shall be able to select candidates whose names do not
17 appear upon the ballot for any office by entering
18 electronically as many names of candidates as the voter is
19 entitled to select for each office.

20 Upon completing his or her selection of candidates or
21 public questions, the voter shall signify that voting has been
22 completed by activating the appropriate button, switch or
23 active area of the ballot screen associated with end of voting.
24 Upon activation, the voting system shall record an image of the
25 completed ballot, increment the proper ballot position
26 registers, and shall signify to the voter that the ballot has
27 been cast. Upon activation, the voting system shall also print
28 a permanent paper record of each ballot cast as defined in
29 Section 24C-2 of this Code. This permanent paper record ~~shall~~
30 ~~either be self contained within the voting device or~~ shall be
31 printed in a clear, readily readable format that can be easily
32 reviewed by the voter for completeness and accuracy and then
33 deposited by the voter into a secure ballot box. No permanent
34 paper record shall be removed from the polling place except by
35 election officials as authorized by this Article. All permanent
36 paper records shall be preserved and secured by election

1 officials in the same manner as paper ballots and shall be
2 available as an official record for any recount, redundant
3 count, or verification or retabulation of the vote count
4 conducted with respect to any election in which the voting
5 system is used. The voter shall exit the voting station and the
6 voting system shall prevent any further attempt to vote until
7 it has been properly re-activated. If a voting device has been
8 enabled for voting but the voter leaves the polling place
9 without casting a ballot, 2 judges of election, one from each
10 of the 2 major political parties, shall spoil the ballot.

11 Throughout the election day and before the closing of the
12 polls, no person may check any vote totals for any candidate or
13 public question on the voting or counting equipment. Such
14 equipment shall be programmed so that no person may reset the
15 equipment for reentry of ballots unless provided the proper
16 code from an authorized representative of the election
17 authority.

18 The precinct judges of election shall check the public
19 register to determine whether the number of ballots counted by
20 the voting equipment agrees with the number of voters voting as
21 shown by the applications for ballot. If the same do not agree,
22 the judges of election shall immediately contact the offices of
23 the election authority in charge of the election for further
24 instructions. If the number of ballots counted by the voting
25 equipment agrees with the number of voters voting as shown by
26 the application for ballot, the number shall be listed on the
27 "Statement of Ballots" form provided by the election authority.

28 The totals for all candidates and propositions shall be
29 tabulated; and 4 copies of a "Certificate of Results" shall be
30 printed by the automatic tabulating equipment; one copy shall
31 be posted in a conspicuous place inside the polling place; and
32 every effort shall be made by the judges of election to provide
33 a copy for each authorized pollwatcher or other official
34 authorized to be present in the polling place to observe the
35 counting of ballots; but in no case shall the number of copies
36 to be made available to pollwatchers be fewer than 4, chosen by

1 lot by the judges of election. In addition, sufficient time
2 shall be provided by the judges of election to the pollwatchers
3 to allow them to copy information from the copy which has been
4 posted.

5 If instructed by the election authority, the judges of
6 election shall cause the tabulated returns to be transmitted
7 electronically to the offices of the election authority via
8 modem or other electronic medium.

9 The precinct judges of election shall select a bi-partisan
10 team of 2 judges, who shall immediately return the ballots in a
11 sealed container, along with all other election materials and
12 equipment as instructed by the election authority; provided,
13 however, that such container must first be sealed by the
14 election judges with filament tape or other approved sealing
15 devices provided for the purpose in a manner that the ballots
16 cannot be removed from the container without breaking the seal
17 or filament tape and disturbing any signatures affixed by the
18 election judges to the container. The election authority shall
19 keep the office of the election authority, or any receiving
20 stations designated by the authority, open for at least 12
21 consecutive hours after the polls close or until the ballots
22 and election material and equipment from all precincts within
23 the jurisdiction of the election authority have been returned
24 to the election authority. Ballots and election materials and
25 equipment returned to the office of the election authority
26 which are not signed and sealed as required by law shall not be
27 accepted by the election authority until the judges returning
28 the ballots make and sign the necessary corrections. Upon
29 acceptance of the ballots and election materials and equipment
30 by the election authority, the judges returning the ballots
31 shall take a receipt signed by the election authority and
32 stamped with the time and date of the return. The election
33 judges whose duty it is to return any ballots and election
34 materials and equipment as provided shall, in the event the
35 ballots, materials or equipment cannot be found when needed, on
36 proper request, produce the receipt which they are to take as

1 above provided.

2 (Source: P.A. 93-574, eff. 8-21-03.)