

**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.

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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

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

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

(10 ILCS 5/24C-2)

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

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

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1 above provided.

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