94TH GENERAL ASSEMBLY

State of Illinois

2005 and 2006

HB0111

Introduced 1/6/2005, by Rep. Sara Feigenholtz

SYNOPSIS AS INTRODUCED:

10 ILCS 5/18A-15

Amends the Election Code. Provides that casting a provisional ballot in the incorrect precinct does not invalidate that ballot's votes for federal and statewide offices. Requires the State Board of Elections to adopt rules for the counting of those votes.

LRB094 04148 JAM 34169 b

A BILL FOR

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 Section

5   18A-15 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 for federal and statewide

23   offices on a provisional ballot cast in the incorrect

24   precinct that meets the other requirements of this

25   subsection shall be valid and counted in accordance with

26   rules adopted by the State Board of Elections. As used in

27   this item, "federal office" is defined as provided in

28   Section 20-1 and "statewide office" means the Governor,

29   Lieutenant Governor, Attorney General, Secretary of State,

30   Comptroller, and Treasurer;

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.)