



95TH GENERAL ASSEMBLY

State of Illinois

2007 and 2008

SB2626

Introduced 2/15/2008, by Sen. Dan Cronin

SYNOPSIS AS INTRODUCED:

20 ILCS 3420/3	from Ch. 127, par. 133c23
20 ILCS 3420/4	from Ch. 127, par. 133c24
20 ILCS 3420/7 new	

Amends the Illinois State Agency Historic Resources Preservation Act. Grants a right of private action against violations of the Act. Makes other changes. Effective immediately.

LRB095 19905 JAM 46322 b

1 AN ACT concerning State government.

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

4 Section 5. The Illinois State Agency Historic Resources
5 Preservation Act is amended by changing Sections 3 and 4 and by
6 adding Section 7 as follows:

7 (20 ILCS 3420/3) (from Ch. 127, par. 133c23)

8 Sec. 3. Definitions.

9 (a) "Director" means the Director of Historic Preservation
10 who shall serve as the State Historic Preservation Officer.

11 (b) "Agency" shall have the same meaning as in Section 1-20
12 of the Illinois Administrative Procedure Act, and shall
13 specifically include all agencies and entities made subject to
14 such Act by any State statute.

15 (c) "Historic resource" means any property which is either
16 publicly or privately held and which:

17 (1) is listed in the National Register of Historic
18 Places (hereafter "National Register");

19 (2) has been formally determined by the Director to be
20 eligible for listing in the National Register as defined in
21 Section 106 of Title 16 of the United States Code;

22 (3) has been nominated by the Director and the Illinois
23 Historic Sites Advisory Council for listing in the National

1 Register;

2 (4) meets one or more criteria for listing in the
3 National Register, ~~as determined by the Director~~; or

4 (5) is listed in the Illinois Register of Historic
5 Places.

6 (d) "Adverse effect" means:

7 (1) destruction or alteration of all or part of an
8 historic resource;

9 (2) isolation or alteration of the surrounding
10 environment of an historic resource;

11 (3) introduction of visual, audible, or atmospheric
12 elements which are out of character with an historic
13 resource or which alter its setting;

14 (4) neglect or improper utilization of an historic
15 resource which results in its deterioration or
16 destruction; or

17 (5) transfer or sale of an historic resource to any
18 public or private entity without the inclusion of adequate
19 conditions or restrictions regarding preservation,
20 maintenance, or use.

21 (e) "Comment" means the written finding by the Director of
22 the effect of a State undertaking on an historic resource.

23 (f) "Undertaking" means any project, activity, or program
24 that can result in changes in the character or use of historic
25 property, if any historic property is located in the area of
26 potential effects. The project, activity or program shall be

1 under the direct or indirect jurisdiction of a State agency or
2 licensed or assisted by a State agency. An undertaking
3 includes, but is not limited to, action which is:

4 (1) directly undertaken by a State agency;

5 (2) supported in whole or in part through State
6 contracts, grants, subsidies, loan guarantees, or any
7 other form of direct or indirect funding assistance; or

8 (3) carried out pursuant to a State lease, permit,
9 license, certificate, approval, or other form of
10 entitlement or permission or pursuant to a requirement that
11 the State be notified about action taken or to be taken.

12 (g) "Committee" means the Historic Preservation Mediation
13 Committee.

14 (h) "Feasible" means capable of being accomplished in a
15 successful manner within a reasonable period of time, taking
16 into account economic, environmental, social, and
17 technological factors.

18 (i) "Private undertaking" means any undertaking that does
19 not receive public funding or is not on public lands.

20 (j) "High probability area" means any occurrence of Cahokia
21 Alluvium, Carmi Member of the Equality Formation, Grayslake
22 Peat, Parkland Sand, Peyton Colluvium, the Batavia Member of
23 the Henry Formation, or the Mackinaw Member, as mapped by
24 Lineback et al. (1979) at a scale of 1-500,000 within permanent
25 stream floodplains and including

26 (1) 500 yards of the adjoining bluffline crest of the

1 Fox, Illinois, Kankakee, Kaskaskia, Mississippi, Ohio,
2 Rock and Wabash Rivers and 300 yards of the adjoining
3 bluffline crest of all other rivers or

4 (2) a 500 yard wide area along the shore of Lake
5 Michigan abutting the high water mark.

6 (Source: P.A. 87-717; 87-739; 87-847; 88-45.)

7 (20 ILCS 3420/4) (from Ch. 127, par. 133c24)

8 Sec. 4. State agency undertakings.

9 (a) As early in the planning process as may be practicable
10 and prior to the approval of the final design or plan of any
11 undertaking by a State agency, or prior to the funding of any
12 undertaking by a State agency, or prior to an action of
13 approval or entitlement of any private undertaking by a State
14 agency, written notice of the project shall be given to the
15 Director either by the State agency or the recipients of its
16 funds, permits or licenses. The State agency shall consult with
17 the Director to determine the documentation requirements
18 necessary for identification and treatment of historic
19 resources. For the purposes of identification and evaluation of
20 historic resources, the Director may require archaeological
21 and historic investigations. Responsibility for notice and
22 documentation may be delegated by the State agency to a local
23 or private designee.

24 (b) Within 30 days after receipt of complete and correct
25 documentation of a proposed undertaking, the Director shall

1 review and comment to the agency on the likelihood that the
2 undertaking will have an adverse effect on a historic resource.
3 In the case of a private undertaking, the Director shall, not
4 later than 30 days following the receipt of an application with
5 complete documentation of the undertaking, either approve that
6 application allowing the undertaking to proceed or tender to
7 the applicant a written statement setting forth the reasons for
8 the requirement of an archaeological investigation. If there is
9 no action within 30 days after the filing of the application
10 with the complete documentation of the undertaking, the
11 applicant may deem the application approved and may proceed
12 with the undertaking. Thereafter, all requirements for
13 archaeological investigations are waived under this Act.

14 (c) If the Director finds that an undertaking will
15 adversely effect an historic resource or is inconsistent with
16 agency policies, the State agency shall consult with the
17 Director and shall discuss alternatives to the proposed
18 undertaking which could eliminate, minimize, or mitigate its
19 adverse effect. During the consultation process, the State
20 agency shall explore all feasible and prudent plans which
21 eliminate, minimize, or mitigate adverse effects on historic
22 resources. Grantees, permittees, licensees, or other parties
23 in interest and representatives of national, State, and local
24 units of government and public and private organizations may
25 participate in the consultation process. The process may
26 involve on-site inspections and public informational meetings

1 pursuant to regulations issued by the Historic Preservation
2 Agency.

3 (d) The State agency and the Director may agree that there
4 is a feasible and prudent alternative which eliminates,
5 minimizes, or mitigates the adverse effect of the undertaking.
6 Upon such agreement, or if the State agency and the Director
7 agree that there are no feasible and prudent alternatives which
8 eliminate, minimize, or mitigate the adverse effect, the
9 Director shall prepare a Memorandum of Agreement describing the
10 alternatives or stating the finding. The State agency may
11 proceed with the undertaking once a Memorandum of Agreement has
12 been signed by both the State agency and the Director.

13 (e) After the consultation process, the Director and the
14 State agency may fail to agree on the existence of a feasible
15 and prudent alternative which would eliminate, minimize, or
16 mitigate the adverse effect of the undertaking on the historic
17 resource. If no agreement is reached, the agency shall call a
18 public meeting in the county where the undertaking is proposed
19 within 60 days. If, within 14 days following conclusion of the
20 public meeting, the State agency and the Director fail to agree
21 on a feasible and prudent alternative, the proposed
22 undertaking, with supporting documentation, shall be submitted
23 to the Historic Preservation Mediation Committee. The document
24 shall be sufficient to identify each alternative considered by
25 the Agency and the Director during the consultation process and
26 the reason for its rejection.

1 (f) The Mediation Committee shall consist of the Director
2 and 5 persons appointed by the Director for terms of 3 years
3 each, each of whom shall be no lower in rank than a division
4 chief and each of whom shall represent a different State
5 agency. An agency that is a party to mediation shall be
6 notified of all hearings and deliberations and shall have the
7 right to participate in deliberations as a non-voting member of
8 the Committee. Within 30 days after submission of the proposed
9 undertaking, the Committee shall meet with the Director and the
10 submitting agency to review each alternative considered by the
11 State agency and the Director and to evaluate the existence of
12 a feasible and prudent alternative. In the event that the
13 Director and the submitting agency continue to disagree, the
14 Committee shall provide a statement of findings or comments
15 setting forth an alternative to the proposed undertaking or
16 stating the finding that there is no feasible or prudent
17 alternative. The State agency shall consider the written
18 comments of the Committee and shall respond in writing to the
19 Committee before proceeding with the undertaking.

20 (g) When an undertaking is being reviewed pursuant to
21 Section 106 of the National Historic Preservation Act of 1966,
22 the procedures of this law shall not apply and any review or
23 comment by the Director on such undertaking shall be within the
24 framework or procedures of the federal law. When an undertaking
25 involves a structure listed on the Illinois Register of
26 Historic Places, the rules and procedures of the Illinois

1 Historic Preservation Act shall apply. This subsection shall
2 not prevent the Illinois Historic Preservation Agency from
3 entering into an agreement with the Advisory Council on
4 Historic Preservation pursuant to Section 106 of the National
5 Historic Preservation Act to substitute this Act and its
6 procedures for procedures set forth in Council regulations
7 found in 36 C.F.R. Part 800.7. A State undertaking that is
8 necessary to prevent an immediate and imminent threat to life
9 or property shall be exempt from the requirements of this Act.
10 Where possible, the Director shall be consulted in the
11 determination of the exemption. In all cases, the agency shall
12 provide the Director with a statement of the reasons for the
13 exemption and shall have an opportunity to comment on the
14 exemption. The statement and the comments of the Director shall
15 be included in the annual report of the Historic Preservation
16 Agency as a guide to future actions. The provisions of this Act
17 do not apply to undertakings pursuant to the Illinois Oil and
18 Gas Act, the Surface-Mined Land Conservation and Reclamation
19 Act and the Surface Coal Mining Land Conservation and
20 Reclamation Act.

21 (h) The Director shall hold a public hearing before (1)
22 making a finding that an undertaking will not adversely affect
23 an historic resource, (2) making a finding that there is no
24 prudent or feasible alternative, or (3) entering into a
25 Memorandum of Agreement.

26 (Source: P.A. 86-707; 87-739; 87-847; 87-895.)

1 (20 ILCS 3420/7 new)

2 Sec. 7. Standing. Any person or entity shall have standing
3 and the right to enforce the provisions of this Act. In case
4 any building or structure is demolished, constructed,
5 reconstructed, altered, repaired, converted, or maintained in
6 violation of this Act, any person or entity that shows that
7 his, her, or its property or person or other interest will be
8 substantially affected by the alleged violation, in addition to
9 other remedies, may institute any appropriate action or
10 proceeding (1) to prevent the unlawful construction,
11 reconstruction, alteration, repair, conversion, maintenance,
12 or use, (2) to prevent the occupancy of the building,
13 structure, or land, (3) to prevent any illegal act, conduct,
14 business, or use in or about the premises, or (4) to restrain,
15 correct, or abate the violation.

16 In any action or proceeding for a purpose mentioned in this
17 Section, the court with jurisdiction of such action or
18 proceeding has the power to and in its discretion may issue a
19 restraining order, a writ of mandamus to any officer, or a
20 preliminary injunction, as well as a permanent injunction, upon
21 such terms and under such conditions as will do justice and
22 enforce the purposes set forth in this Act.

23 If the court finds that the defendant has engaged in any of
24 the foregoing prohibited activities, then the court shall allow
25 the plaintiff a reasonable sum of money for the services of the

1 plaintiff's attorney. This allowance shall be a part of the
2 costs of the litigation assessed against the defendant and may
3 be recovered as such.

4 A plaintiff need not prove any specific, special, or unique
5 damages to the plaintiff or the plaintiff's property or any
6 adverse effect upon the plaintiff's property from the alleged
7 violation in order to maintain a suit under this Act.

8 Section 99. Effective date. This Act takes effect upon
9 becoming law.