

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; or

21 (6) where the project as proposed is not in conformance  
22 with the Secretary of the Interior's Standards for Historic  
23 Preservation.

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

26 (f) "Undertaking" means any project, activity, or program

1 that can result in changes in the character or use of historic  
2 property, if any historic property is located in the area of  
3 potential effects. The project, activity or program shall be  
4 under the direct or indirect jurisdiction of a State agency or  
5 licensed or assisted by a State agency. An undertaking  
6 includes, but is not limited to, action which is:

7 (1) directly undertaken by a State agency;

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

11 (3) carried out pursuant to a State lease, permit,  
12 license, certificate, approval, or other form of  
13 entitlement or permission or pursuant to a requirement that  
14 a State agency be notified about action taken or to be  
15 taken.

16 (g) "Committee" means the Historic Preservation Mediation  
17 Committee.

18 (h) "Feasible" means capable of being accomplished in a  
19 successful manner within a reasonable period of time, taking  
20 into account economic, environmental, social, and  
21 technological factors.

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

24 (j) "High probability area" means any occurrence of Cahokia  
25 Alluvium, Carmi Member of the Equality Formation, Grayslake  
26 Peat, Parkland Sand, Peyton Colluvium, the Batavia Member of

1 the Henry Formation, or the Mackinaw Member, as mapped by  
2 Lineback et al. (1979) at a scale of 1-500,000 within permanent  
3 stream floodplains and including

4 (1) 500 yards of the adjoining bluffline crest of the  
5 Fox, Illinois, Kankakee, Kaskaskia, Mississippi, Ohio,  
6 Rock and Wabash Rivers and 300 yards of the adjoining  
7 bluffline crest of all other rivers or

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

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

11 (20 ILCS 3420/4) (from Ch. 127, par. 133c24)

12 Sec. 4. State agency undertakings.

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

1 documentation may be delegated by the State agency to a local  
2 or private designee.

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

18 (c) If the Director finds that an undertaking will  
19 adversely effect an historic resource or is inconsistent with  
20 agency policies, the State agency shall consult with the  
21 Director and shall discuss alternatives to the proposed  
22 undertaking which could eliminate, minimize, or mitigate its  
23 adverse effect. During the consultation process, the State  
24 agency shall explore all feasible and prudent plans which  
25 eliminate, minimize, or mitigate adverse effects on historic  
26 resources. Grantees, permittees, licensees, or other parties

1 in interest and representatives of national, State, and local  
2 units of government and public and private organizations may  
3 participate in the consultation process. The process may  
4 involve on-site inspections and public informational meetings  
5 pursuant to regulations issued by the Historic Preservation  
6 Agency.

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

17 (e) After the consultation process, the Director and the  
18 State agency may fail to agree on the existence of a feasible  
19 and prudent alternative which would eliminate, minimize, or  
20 mitigate the adverse effect of the undertaking on the historic  
21 resource. If no agreement is reached, the agency shall call a  
22 public meeting in the county where the undertaking is proposed  
23 within 60 days. If, within 14 days following conclusion of the  
24 public meeting, the State agency and the Director fail to agree  
25 on a feasible and prudent alternative, the proposed  
26 undertaking, with supporting documentation, shall be submitted

1 to the Historic Preservation Mediation Committee. The document  
2 shall be sufficient to identify each alternative considered by  
3 the Agency and the Director during the consultation process and  
4 the reason for its rejection.

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

24 (g) When an undertaking is being reviewed pursuant to  
25 Section 106 of the National Historic Preservation Act of 1966,  
26 the procedures of this law shall not apply and any review or

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

25 (h) The Director, at the Director's discretion, or upon  
26 written request by any person and when the Director agrees that



1 there is a substantial public interest in the matter, may hold  
2 a public hearing before (1) making a finding that an  
3 undertaking will not adversely affect an historic resource, (2)  
4 making a finding that there is no prudent or feasible  
5 alternative, or (3) entering into or modifying a Memorandum of  
6 Agreement. The Director and the State agency shall consider the  
7 matters presented at the hearing and shall, in written form,  
8 document their consideration of principal issues raised in the  
9 hearing.

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

11 (20 ILCS 3420/7 new)

12 Sec. 7. Standing. Any person or entity shall have standing  
13 and the right to enforce the provisions of this Act. In case  
14 any building or structure is demolished, constructed,  
15 reconstructed, altered, repaired, converted, or maintained in  
16 violation of this Act, any person or entity that shows that  
17 his, her, or its property or person or other interest will be  
18 substantially affected by the alleged violation, in addition to  
19 other remedies, may institute any appropriate action or  
20 proceeding to prevent the unlawful construction,  
21 reconstruction, alteration, repair, conversion, or maintenance  
22 to restrain, correct, or abate the violation.

23 In any action or proceeding for a purpose mentioned in this  
24 Section, the court with jurisdiction of such action or  
25 proceeding has the power to and in its discretion may issue a

1 restraining order, a writ of mandamus to any officer, or a  
2 preliminary injunction, as well as a permanent injunction, upon  
3 such terms and under such conditions as will do justice and  
4 enforce the purposes set forth in this Act.

5 If the court finds that the defendant has engaged in any of  
6 the foregoing prohibited activities, then the court shall allow  
7 the plaintiff a reasonable sum of money for the services of the  
8 plaintiff's attorney. This allowance shall be a part of the  
9 costs of the litigation assessed against the defendant and may  
10 be recovered as such.

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

15 Section 99. Effective date. This Act takes effect upon  
16 becoming law.