



Sen. Dan Cronin

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LRB095 19905 JAM 49335 a

1 AMENDMENT TO SENATE BILL 2626

2 AMENDMENT NO. _____. Amend Senate Bill 2626 by replacing
3 everything after the enacting clause with the following:

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:

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

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

6 (3) has been nominated by the Director and the Illinois
7 Historic Sites Advisory Council for listing in the National
8 Register;

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

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

13 (d) "Adverse effect" means:

14 (1) destruction or alteration of all or part of an
15 historic resource;

16 (2) isolation or alteration of the surrounding
17 environment of an historic resource;

18 (3) introduction of visual, audible, or atmospheric
19 elements which are out of character with an historic
20 resource or which alter its setting;

21 (4) neglect or improper utilization of an historic
22 resource which results in its deterioration or
23 destruction; ~~or~~

24 (5) transfer or sale of an historic resource to any
25 public or private entity without the inclusion of adequate
26 conditions or restrictions regarding preservation,

1 maintenance, or use; or-

2 (6) where the project as proposed is not in conformance
3 with the Secretary of the Interior's Standards for Historic
4 Preservation.

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

7 (f) "Undertaking" means any project, activity, or program
8 that can result in changes in the character or use of historic
9 property, if any historic property is located in the area of
10 potential effects. The project, activity or program shall be
11 under the direct or indirect jurisdiction of a State agency or
12 licensed or assisted by a State agency. An undertaking
13 includes, but is not limited to, action which is:

14 (1) directly undertaken by a State agency;

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

18 (3) carried out pursuant to a State lease, permit,
19 license, certificate, approval, or other form of
20 entitlement or permission or pursuant to a requirement that
21 a State Agency be notified about action taken or to be
22 taken.

23 (g) "Committee" means the Historic Preservation Mediation
24 Committee.

25 (h) "Feasible" means capable of being accomplished in a
26 successful manner within a reasonable period of time, taking

1 into account economic, environmental, social, and
2 technological factors.

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

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

11 (1) 500 yards of the adjoining bluffline crest of the
12 Fox, Illinois, Kankakee, Kaskaskia, Mississippi, Ohio,
13 Rock and Wabash Rivers and 300 yards of the adjoining
14 bluffline crest of all other rivers or

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

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

18 (20 ILCS 3420/4) (from Ch. 127, par. 133c24)

19 Sec. 4. State agency undertakings.

20 (a) As early in the planning process as may be practicable
21 and prior to the approval of the final design or plan of any
22 undertaking by a State agency, or prior to the funding of any
23 undertaking by a State agency, or prior to an action of
24 approval or entitlement of any private undertaking by a State
25 agency, written notice of the project shall be given to the

1 Director either by the State agency or the recipients of its
2 funds, permits or licenses. The State agency shall consult with
3 the Director to determine the documentation requirements
4 necessary for identification and treatment of historic
5 resources. For the purposes of identification and evaluation of
6 historic resources, the Director may require archaeological
7 and historic investigations. Responsibility for notice and
8 documentation may be delegated by the State agency to a local
9 or private designee.

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

25 (c) If the Director finds that an undertaking will
26 adversely effect an historic resource or is inconsistent with

1 agency policies, the State agency shall consult with the
2 Director and shall discuss alternatives to the proposed
3 undertaking which could eliminate, minimize, or mitigate its
4 adverse effect. During the consultation process, the State
5 agency shall explore all feasible and prudent plans which
6 eliminate, minimize, or mitigate adverse effects on historic
7 resources. Grantees, permittees, licensees, or other parties
8 in interest and representatives of national, State, and local
9 units of government and public and private organizations may
10 participate in the consultation process. The process may
11 involve on-site inspections and public informational meetings
12 pursuant to regulations issued by the Historic Preservation
13 Agency.

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

24 (e) After the consultation process, the Director and the
25 State agency may fail to agree on the existence of a feasible
26 and prudent alternative which would eliminate, minimize, or

1 mitigate the adverse effect of the undertaking on the historic
2 resource. If no agreement is reached, the agency shall call a
3 public meeting in the county where the undertaking is proposed
4 within 60 days. If, within 14 days following conclusion of the
5 public meeting, the State agency and the Director fail to agree
6 on a feasible and prudent alternative, the proposed
7 undertaking, with supporting documentation, shall be submitted
8 to the Historic Preservation Mediation Committee. The document
9 shall be sufficient to identify each alternative considered by
10 the Agency and the Director during the consultation process and
11 the reason for its rejection.

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

1 stating the finding that there is no feasible or prudent
2 alternative. The State agency shall consider the written
3 comments of the Committee and shall respond in writing to the
4 Committee before proceeding with the undertaking.

5 (g) When an undertaking is being reviewed pursuant to
6 Section 106 of the National Historic Preservation Act of 1966,
7 the procedures of this law shall not apply and any review or
8 comment by the Director on such undertaking shall be within the
9 framework or procedures of the federal law. When an undertaking
10 involves a structure listed on the Illinois Register of
11 Historic Places, the rules and procedures of the Illinois
12 Historic Preservation Act shall apply. This subsection shall
13 not prevent the Illinois Historic Preservation Agency from
14 entering into an agreement with the Advisory Council on
15 Historic Preservation pursuant to Section 106 of the National
16 Historic Preservation Act to substitute this Act and its
17 procedures for procedures set forth in Council regulations
18 found in 36 C.F.R. Part 800.7. A State undertaking that is
19 necessary to prevent an immediate and imminent threat to life
20 or property shall be exempt from the requirements of this Act.
21 Where possible, the Director shall be consulted in the
22 determination of the exemption. In all cases, the agency shall
23 provide the Director with a statement of the reasons for the
24 exemption and shall have an opportunity to comment on the
25 exemption. The statement and the comments of the Director shall
26 be included in the annual report of the Historic Preservation

1 Agency as a guide to future actions. The provisions of this Act
2 do not apply to undertakings pursuant to the Illinois Oil and
3 Gas Act, the Surface-Mined Land Conservation and Reclamation
4 Act and the Surface Coal Mining Land Conservation and
5 Reclamation Act.

6 (h) The Director, at the Director's discretion, or upon
7 written request by any person and when the Director agrees that
8 there is a substantial public interest in the matter, may hold
9 a public hearing before (1) making a finding that an
10 undertaking will not adversely affect an historic resource, (2)
11 making a finding that there is no prudent or feasible
12 alternative, or (3) entering into or modifying a Memorandum of
13 Agreement. The Director and the State Agency shall consider the
14 matters presented at the hearing and shall, in written form,
15 document their consideration of principal issues raised in the
16 hearing.

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

18 (20 ILCS 3420/7 new)

19 Sec. 7. Standing. Any person or entity shall have standing
20 and the right to enforce the provisions of this Act. In case
21 any building or structure is demolished, constructed,
22 reconstructed, altered, repaired, converted, or maintained in
23 violation of this Act, any person or entity that shows that
24 his, her, or its property or person or other interest will be
25 substantially affected by the alleged violation, in addition to

1 other remedies, may institute any appropriate action or
2 proceeding to prevent the unlawful construction,
3 reconstruction, alteration, repair, conversion, or maintenance
4 to restrain, correct, or abate the violation.

5 In any action or proceeding for a purpose mentioned in this
6 Section, the court with jurisdiction of such action or
7 proceeding has the power to and in its discretion may issue a
8 restraining order, a writ of mandamus to any officer, or a
9 preliminary injunction, as well as a permanent injunction, upon
10 such terms and under such conditions as will do justice and
11 enforce the purposes set forth in this Act.

12 If the court finds that the defendant has engaged in any of
13 the foregoing prohibited activities, then the court shall allow
14 the plaintiff a reasonable sum of money for the services of the
15 plaintiff's attorney. This allowance shall be a part of the
16 costs of the litigation assessed against the defendant and may
17 be recovered as such.

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

22 Section 99. Effective date. This Act takes effect upon
23 becoming law.".