



97TH GENERAL ASSEMBLY

State of Illinois

2011 and 2012

HB5234

Introduced 2/8/2012, by Rep. Rich Brauer

SYNOPSIS AS INTRODUCED:

See Index

Amends the Illinois Historic Preservation Act. Makes the following changes to a provision listing defined terms: adds and defines the term "historic resource" to mean any property which is either publicly or privately held and which meets one or more listed criteria; and removes the terms "registered Illinois Historic Place", "person", "municipal preservation agency", and "critical historic feature". Removes several powers from the list of powers granted to the Illinois Historic Sites Advisory Council including the power to nominate places to the Illinois Register of Historic Places. Repeals provisions concerning the establishment and maintenance of an Illinois Register of Historic Places by the Historic Preservation Agency; when the demolition of a Critical Historic Feature of a Registered Illinois Historic Place is proper; demolition notices; public funds used in demolition projects; the authority of the Director of Historic Preservation to remove a place from the Illinois Register of Historic Places; injunctions; civil penalties; meetings held by the Municipal Preservation Agency; and judicial reviews of final administrative decisions. Amends the Illinois State Agency Historic Resources Preservation Act. Removes a property's listing in the Illinois Register of Historic Places from the set of criteria a publicly or privately held property must meet to be considered a historic resource. Removes language providing that the rules and procedures of the Illinois Historic Preservation Act shall apply when an undertaking involves a structure listed on the Illinois Register of Historic Places.

LRB097 18532 KTG 63763 b

FISCAL NOTE ACT
MAY APPLY

A BILL FOR

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 Historic Preservation Act is
5 amended by changing Sections 2, 4, and 5 as follows:

6 (20 ILCS 3410/2) (from Ch. 127, par. 133d2)

7 Sec. 2. As used in this Act:

8 (a) "Council" means the Illinois Historic Sites Advisory
9 Council. ~~†~~

10 (b) (Blank). ~~"Demolish" means raze, reconstruct or~~
11 ~~substantially alter;~~

12 (c) "Agency" means the Historic Preservation Agency. ~~†~~

13 (d) "Director" means the Director of Historic Preservation
14 who will serve as the State Historic Preservation Officer. ~~†~~

15 (d-1) "Historic resource" means any property which is
16 either 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; or

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

4 (e) "Place" means (1) any parcel or contiguous grouping of
5 parcels of real estate under common or related ownership or
6 control, where any significant improvements are at least 40
7 years old, or (2) any aboriginal mound, fort, earthwork,
8 village, location, burial ground, historic or prehistoric
9 ruin, mine case or other location which is or may be the source
10 of important archeological data. †

11 (f) (Blank). ~~"Registered Illinois Historic Place" means~~
12 ~~any place listed on the "Illinois Register of Historic Places"~~
13 ~~pursuant to Section 6 of this Act;~~

14 (g) (Blank). ~~"Person" means any natural person,~~
15 ~~partnership, corporation, trust, estate, association, body~~
16 ~~politic, agency, or unit of government and its legal~~
17 ~~representatives, agents, or assigns; and~~

18 (h) (Blank). ~~"Municipal Preservation Agency" means any~~
19 ~~agency described in Section 11 48.2 3 of the "Illinois~~
20 ~~Municipal Code", as now or hereafter amended, or any agency~~
21 ~~with similar authority created by a municipality under Article~~
22 ~~VII, Section 6 of the Illinois Constitution.~~

23 (i) (Blank). ~~"Critical Historic Feature" means those~~
24 ~~physical and environmental components which taken singly or~~
25 ~~together, make a place eligible for designation as a Registered~~
26 ~~Illinois Historic Place.~~

1 (Source: P.A. 84-25.)

2 (20 ILCS 3410/4) (from Ch. 127, par. 133d4)

3 Sec. 4. In addition to those powers specifically granted or
4 necessary to perform the duties prescribed by this Act, the
5 Council shall have the following powers:

6 (a) to recommend nominations to the National Register of
7 Historic Places;

8 (b) (blank); ~~to nominate places to the Illinois Register of~~
9 ~~Historic Places;~~

10 (c) to recommend removal of places from the National
11 Register of Historic Places;

12 (d) (blank); ~~to recommend removal of places from the~~
13 ~~Illinois Register of Historic Places;~~

14 (e) (blank); ~~to establish guidelines determining the~~
15 ~~eligibility for listing and removing places on the Illinois~~
16 ~~Register of Historic Places;~~ and

17 (f) to advise the Agency on matters pertaining to historic
18 preservation.

19 (Source: P.A. 84-25.)

20 (20 ILCS 3410/5) (from Ch. 127, par. 133d5)

21 Sec. 5. In addition to the powers otherwise specifically
22 granted to the Agency by law, the Agency shall have the
23 following powers and responsibilities:

24 (a) to perform the administrative functions for the

1 Council;

2 (b) to hold public hearings and meetings concerning the
3 National Illinois Register of Historic Places;

4 (c) to prepare and periodically revise a statewide
5 preservation plan;

6 (d) to attempt to maximize the extent to which the
7 preservation of historic resources ~~Registered Illinois~~
8 ~~Historic Places~~ is accomplished through active use, including
9 self-sustaining or revenue-producing use and through the
10 involvement of persons other than the Agency; and

11 (e) to disseminate information of historic resources
12 ~~Registered Illinois Historic Places~~, to provide technical and
13 other assistance to persons involved in preservation
14 activities, to develop interpretive programs and otherwise
15 stimulate public interest in preservation.

16 (Source: P.A. 84-25.)

17 (20 ILCS 3410/6 rep.)

18 (20 ILCS 3410/7 rep.)

19 (20 ILCS 3410/8 rep.)

20 (20 ILCS 3410/9 rep.)

21 (20 ILCS 3410/10 rep.)

22 (20 ILCS 3410/11 rep.)

23 (20 ILCS 3410/12 rep.)

24 (20 ILCS 3410/13 rep.)

25 (20 ILCS 3410/14 rep.)

1 Section 10. The Illinois Historic Preservation Act is
2 amended by repealing Sections 6, 7, 8, 9, 10, 11, 12, 13, and
3 14.

4 Section 15. The Illinois State Agency Historic Resources
5 Preservation Act is amended by changing Sections 3 and 4 as
6 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
24 Register; or

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

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

5 (d) "Adverse effect" means:

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

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

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

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

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

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

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

1 licensed or assisted by a State agency. An undertaking
2 includes, but is not limited to, action which is:

3 (1) directly undertaken by a State agency;

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

7 (3) carried out pursuant to a State lease, permit,
8 license, certificate, approval, or other form of
9 entitlement or permission.

10 (g) "Committee" means the Historic Preservation Mediation
11 Committee.

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

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

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

24 (1) 500 yards of the adjoining bluffline crest of the
25 Fox, Illinois, Kankakee, Kaskaskia, Mississippi, Ohio,
26 Rock and Wabash Rivers and 300 yards of the adjoining

1 bluffline crest of all other rivers or
2 (2) a 500 yard wide area along the shore of Lake
3 Michigan abutting the high water mark.
4 (Source: P.A. 87-717; 87-739; 87-847; 88-45.)

5 (20 ILCS 3420/4) (from Ch. 127, par. 133c24)
6 Sec. 4. State agency undertakings.

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

22 (b) Within 30 days after receipt of complete and correct
23 documentation of a proposed undertaking, the Director shall
24 review and comment to the agency on the likelihood that the
25 undertaking will have an adverse effect on a historic resource.

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

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

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

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

25 (f) The Mediation Committee shall consist of the Director
26 and 5 persons appointed by the Director for terms of 3 years

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

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

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

19 (Source: P.A. 96-1000, eff. 7-2-10.)

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3	20 ILCS 3410/2	from Ch. 127, par. 133d2
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7	20 ILCS 3410/7 rep.	
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14	20 ILCS 3410/14 rep.	
15	20 ILCS 3420/3	from Ch. 127, par. 133c23
16	20 ILCS 3420/4	from Ch. 127, par. 133c24