

TITLE 17: CONSERVATION
CHAPTER VI: ILLINOIS HISTORIC PRESERVATION AGENCY
PART 4180 RULES FOR REVIEW OF STATE AGENCY UNDERTAKINGS

Source: <https://www.ilga.gov/commission/jcar/admincode/017/01704180sections.html>

SUBPART A: GENERAL

Section 4180.100 Purpose of Rules

- a) To set forth the practice and procedures to be followed by the Illinois Historic Preservation Agency (IHPA) and all other State agencies in reviewing the effect of State agency undertakings on historic resources;
- b) To establish procedures to facilitate inter-agency activities; and
- c) To establish procedures to allow public access to the review process.

Section 4180.110 Definitions

- a) Words shall have the meaning as defined in the Illinois State Agency Historic Resources Preservation Act (Ill. Rev. Stat. 1989, ch. 127, par. 133c21 et seq., hereinafter referred to as “the Act”).
- b) “Area of Potential Effects”. The Area of Potential Effects includes the geographical area or areas within which an undertaking will cause changes in the character or use of historic properties.
- c) “Director” as used herein shall mean the Director of IHPA or his designee.

Section 4180.120 Incorporations by Reference

- a) The definition and interpretation of criteria for the National Register of Historic Places as found in Section 101 of the National Historic Preservation Act of 1966 (16 U.S.C. 470) and its implementing regulations (36 CFR 60).
- b) The interpretation for the criteria of adverse effect and the definition of “no adverse effect” as found in Section 106 of the National Historic Preservation Act (16 U.S.C. 470) and its implementing regulations, “Protection of Historic Properties” (36 CFR 800).
- c) Minimum professional standards of education and experience for qualified professionals for purposes of conducting activities in compliance with this Act as found in the National Historic Preservation Act (16 U.S.C. 470) and its implementing regulations (36 CFR 61, Appendix A).
- d) Minimum professional standards for archaeological surveys and evaluation are provided in “Guidelines For Archeological Consultants and Reconnaissance Surveys and Reports”, Illinois Historic Preservation Agency, revised June 1991. This document is available from the IHPA, Preservation Services Division, Old State Capitol, Springfield, Illinois 62701.

- e) Minimum standards for documentation to be provided in compliance with the Act can be found in “Archaeology and Historic Preservation; Secretary of the Interior’s Standards and Guidelines”; Federal Register, Vol. 48, N. 190, pp. 44716-44742.
- f) The depiction of “high probability areas” on county maps as produced according to the criteria in Ill. Rev. Stat. 1991, ch. 127, par. 133c22 (j) by the Illinois State Museum from data maintained in the Illinois Geographical Information System as of July 1, 1992. The maps are maintained and available for inspection by the public at the offices of the Illinois Historic Preservation Agency, Archaeology Section, 500 East Madison Street, Springfield, 62701 and at the Illinois State Museum Collection Center, Department of Anthropology, 1920 10½ Street, Springfield, 62703. Copies may be obtained from the Illinois State Museum Collection Center, Department of Anthropology.

(Source: Amended at 17 Ill. Reg. 1521, effective January 25, 1993)

Section 4180.130 Applicability

These rules apply to all State agency undertakings as defined in Section 3(f) of the Act exclusive of those exempted by Section 4(g) of the Act.

SUBPART B: REVIEW PROCEDURES

Section 4180.200 Notice of Undertaking

- a) As early in the planning process as possible, written notice pursuant to Section 4(a) of the Act shall be delivered to the Preservation Services Division of the Illinois Historic Preservation Agency. The written notice shall include, at a minimum:
 - 1) a brief description of the proposed undertaking, including identification of State agency involvement;
 - 2) a map and other description of the location of the proposed undertaking as appropriate, including known prior land uses; and
 - 3) current photographs of all structures above ground within the Area of Potential Effects, any history generally known about the area or known previous surveys.
- b) If the Director determines within thirty (30) calendar days that no resources will be affected, he will so inform the agency, and the project may proceed.
- c) If the agency chooses, initial notice of a project may include documentation required under Section 4180.250. In this instance, the Director will combine the review periods pursuant to Section 4180.200(b) and Section 4180.250(b).

Section 4180.250 Identification of Historic Resources

- a) If the Director does not issue a no effect finding within 30 days after receipt of the notice for the undertaking, the Director will consult with the State agency to determine the documentation necessary to identify and evaluate historic resources within the Area of Potential Effects. Documentation requirements may include, but is not limited to, archaeological surveys and testing, historic surveys, detailed histories of individual structures, and proposed architectural plans. The Director may require an on-site inspection by qualified professionals or appropriate staff to determine presence of historic resources. During documentation consultation, the Director will make available to the State agency such lists and maps as are available at the office of IHPA.
- b) If the Director determines that no historic resources as defined in Section 3(c) of the Act exist within the Area of Potential Effects, he will notify the agency within thirty (30) calendar days after receipt of complete documentation (i.e., sufficient documentation to apply the criteria of the National Register of Historic Places). The agency will then have complied with the law and may proceed with the undertaking.
- c) If the Director determines that historic resources as defined in Section 3(c) of the Act exist within the Area of Potential Effects, he will notify the State agency within thirty (30) calendar days after receipt of complete documentation and inform the agency of the likelihood of an adverse effect.
- d) The State agency may proceed with an undertaking if no response is received from IHPA within forty five (45) calendar days after date of completed documentation.

Section 4180.300 Determination of Effect

- a) The Director shall apply the criteria of adverse effect as defined in Section 3(d) of the Act and deliver his conclusion to the State agency.
- b) The Director may conclude that no effect or no adverse effect will occur based on the documentation submitted by the State agency. In these instances, upon receipt of written notice to that effect from IHPA, the State agency will have fulfilled its responsibilities pursuant to the Act. In some cases, the Director may issue a no adverse effect finding with conditions. In this case, the State agency will fulfill its responsibilities pursuant to the Act by meeting the conditions and notifying the Director in writing.
- c) If the Director concludes, in consultation with the State agency, that an adverse effect exists, the State agency shall initiate the consultation process outlined in Section 4180.350.

Section 4180.350 Consultation Process for Adverse Effects

- a) To initiate the consultation process, the Director and the State agency shall consult to determine such further investigation of various alternatives as is necessary to determine all feasible and prudent alternatives to the undertaking as originally proposed in order to avoid, minimize or mitigate the identified adverse effects.
- b) In addition to the State agency and IHPA, consulting parties may include State agencies, local governments, local not-for-profit groups and other parties of interest as agreed to by the State agency and the Director. The State agency and the Director may agree to call a public

information meeting to obtain public comment concerning the proposed undertaking and its effects on historic resources pursuant to Section 4180.450.

- c) After consideration of the information collected during the consulting process, if the State agency and the Director agree upon a feasible and prudent alternative which eliminates the adverse effect, the Director shall conclude that there is no adverse effect and, upon receipt of written notice to that effect from IHPA, the State agency will have fulfilled its responsibilities under the Act.
- d) After consideration of the information collected during the consulting process, if the State agency and the Director agree upon a feasible and prudent alternative which minimizes or mitigates the adverse effect, or if they determine that there are no feasible and prudent alternatives, the Director shall execute a Memorandum of Agreement as provided in Section 4(d) of the Act within thirty (30) calendar days. Other consulting parties shall have the opportunity to concur with the Agreement if they will be responsible for carrying out any of the terms specified in the agreement. Upon ratification of the Memorandum of Agreement and carrying out its terms, the State agency will have fulfilled its responsibilities under the Act.

Section 4180.400 Failure to Agree

If the State agency and the Director fail to agree upon the existence of a feasible and prudent alternative and cannot execute a Memorandum of Agreement, the State agency shall call a public meeting pursuant to Section 4(e) of the Act. The purpose of the public meeting is to solicit the opinions and recommendations of national, State and local units of government, public and private organizations, and private individuals. Public meetings shall be carried out pursuant to Section 4180.450.

Section 4180.450 Public Meeting

- a) The State agency shall give notice of a public meeting at least thirty (30) calendar days before the date of the public meeting. Notice shall be placed in a newspaper of general circulation in the area in which the proposed undertaking is to occur. The notice shall include the following information:
 - 1) The date, time, and place of the public meeting;
 - 2) The purpose of the public meeting;
 - 3) A description of the undertaking;
 - 4) A description of the resources involved; and
 - 5) The procedure for offering written or oral testimony.
- b) The State agency shall designate an officer to conduct the public meeting and shall be responsible for recording the proceedings and providing a written transcript which shall be delivered to the Director within seven (7) calendar days after the public meeting. The written transcript shall also be made available to the public by the State agency in accordance with the Freedom of

Information Act (Ill. Rev. Stat. 1989, ch. 116, par. 201 et seq.). The Director or his designee shall attend the public meeting. If the Director and the State agency agree that the purposes of the Act will be served, the agency may include consideration of historic resources within their existing public hearing procedures.

Section 4180.500 Mediation Committee Appointment and Procedures

- a) The Director shall appoint five persons to serve on the Historic Preservation Mediation Committee pursuant to Sections 4(e) and (f) of the Act. The Director shall serve as Chairman of the Committee.

The Committee shall have the power to write By-Laws and Rules governing operation. The IHPA shall provide education and staff support necessary to conduct business. Members shall serve without compensation but shall have expenses reimbursed by IHPA.

- b) If, within fourteen (14) calendar days after the public meeting, the State agency and Director fail to agree, the State agency shall submit documentation to the Committee as specified in Section 4(e) of the Act. The document shall contain, at a minimum:
 - 1) Description of the proposed undertaking;
 - 2) Description of the resources affected;
 - 3) Alternatives considered and reasons for their rejection; and
 - 4) A written transcript of the public meeting.
- c) The Committee shall meet pursuant to Section 4(f) of the Act and provide its findings or comments to the State agency within thirty (30) calendar days after receipt of this documentation. The State agency shall implement the undertaking in accordance with comments of the Committee or respond in writing prior to proceeding with the undertaking concerning the reasons why implementation of the Committee's findings or comments is not prudent or feasible.

Section 4180.550 Emergency Undertakings

- a) An emergency undertaking is an action by a State agency necessary to prevent an imminent threat to property or public health or safety. Such an undertaking shall be considered an emergency if the action must be implemented within thirty (30) calendar days, usually due to a natural disaster or emergency declared by the Governor or a local government's chief elected official. In such instances, the State agency shall informally consult with IHPA staff to the extent practical to explain reasons for declaring the emergency and take into account IHPA recommendations.
- b) As soon as possible after taking the action, the State agency shall report to the Director concerning the reasons for the emergency action taken, including impacts on historic resources and measures taken to mitigate adverse impacts.

Section 4180.600 Categorical No Effects

The State agency and the Director may enter into a written agreement stating that a repetitive undertaking or a certain class of undertakings shall have no effect on historic resources, thereby waiving the requirement for review of each action covered by the agreement. To qualify, a State agency shall assign a staff person to carry out the terms of such agreement. Such agreements shall be subject to review for amendment or revision. Examples include: minor sewer rehabilitation, in-kind bridge repair, licensing private wells, and highway maintenance.

Section 4180.650 Programmatic Agreements

The State agency and the Director may enter into a written agreement stating that a repetitive undertaking or certain class of undertakings or a large complex undertaking may have an adverse effect on historic resources and may detail the measures to be undertaken to minimize or mitigate the adverse effects programmatically. Such agreements are appropriate when adverse effects to specific resources are anticipated but unknown at the time consultation occurs. Such agreements shall be for a specified period of time and shall be subject to review for amendment or revision. Examples include: major land acquisitions, routine maintenance at State-owned complexes, master management plans or statewide loan programs involving similar work items.

Section 4180.700 Foreclosure

If the State agency fails to notify the Director of an undertaking in accordance with Section 4(a) of the Act, the Director shall advise a State agency that the State agency has not afforded IHPA a reasonable opportunity to comment. If the State agency objects to this finding, the Director shall consider consultation concluded and initiate Sections 4(e) and (f) of the Act.

Section 4180.750 Resources Discovered During Undertaking Implementation

When the State agency has fully complied with the Act and finds resources during the implementation of the project not subject to treatment in a previously executed agreement or other finding by the Director, the State agency shall cease, or cause to stop, any activity having an effect on the resource and consult with the Director to determine a treatment plan for any historic resources affected by the undertaking. If the State agency and the Director cannot agree upon a treatment plan, the matter shall be brought before the Mediation Committee within fourteen (14) calendar days for immediate resolution. Portions of the project not affecting the discovered resources may proceed.

AUTHORITY: Implementing Section 4 and authorized by Section 5 of the Illinois State Agency Historic Resources Preservation Act (Ill. Rev. Stat. 1991, ch. 127, pars. 133c24 and 133c25).

SOURCE: Adopted at 15 Ill. Reg. 18151, effective December 9, 1991; amended at 17 Ill. Reg. 1521, effective January 25, 1993.