



103RD GENERAL ASSEMBLY

State of Illinois

2023 and 2024

HB3642

Introduced 2/17/2023, by Rep. Laura Faver Dias

SYNOPSIS AS INTRODUCED:

60 ILCS 1/115-5
60 ILCS 1/115-55
60 ILCS 1/115-90
60 ILCS 1/115-95
60 ILCS 1/115-97 new

Amends the Township Open Space Article of the Township Code. Reduces the acreage that constitutes open land or open space under the Article to 25 acres (currently, 50 acres). Provides, in the definition of "open space purposes", that development includes development for agricultural purposes. Provides that a township board may lease open space for open space purposes and may not lease any part of open space to anyone other than the federal government, a state government, or a local government. Provides that leased open space may be used for agricultural purposes. Provides that the township board may not sell, convey, donate, or otherwise dispose of open space without referendum approval by the majority of the voters of the township at a regular election, and provides that the board may certify the question of disposition of property to the appropriate election authority only if the board approves the question by at least a two-thirds majority of the board members. Provides that, if a township dissolves or is consolidated or merged or the boundaries of the township are altered, any affected open space shall continue to be used as required in the open space plan unless the open space is disposed of is approved by a two-thirds vote of the board of the unit of local government in control of that open space and after referendum of the voters of the unit of local government.

LRB103 30637 AWJ 57091 b

1 AN ACT concerning local government.

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

4 Section 5. The Township Code is amended by changing
5 Sections 115-5, 115-55, 115-90, and 115-95 and by adding
6 Section 115-97 as follows:

7 (60 ILCS 1/115-5)

8 Sec. 115-5. Definitions. As used in this Article, unless
9 the context otherwise requires:

10 "Board" means the township board in counties having a
11 population of more than 150,000.

12 "Development of real property" means the constructing,
13 installing, planting or creating of any permanent or temporary
14 improvement of real property that has been acquired for open
15 space purposes.

16 "Open land" or "open space" means any space or area of land
17 or water of an area of 25 ~~50~~ acres or more, the preservation or
18 the restriction of development or use of which would (i)
19 maintain or enhance the conservation of natural or scenic
20 resources; (ii) protect natural streams or water supply; (iii)
21 promote conservation of soils, wet lands, or shores; (iv)
22 afford or enhance public outdoor recreation opportunities; (v)
23 preserve flora and fauna, geological features, historic sites,

1 or other areas of educational or scientific interest; (vi)
2 enhance the value to the public of abutting or neighboring
3 highways, parks, or other public lands; (vii) implement the
4 plan of development adopted by the planning commission of any
5 municipality or county; or (viii) promote orderly urban or
6 suburban development. A township at any time may release a
7 specified parcel of land from an open space plan and allow the
8 development of the parcel to occur. Once development (as
9 defined in Section 115-55) has commenced, the land shall no
10 longer be eligible for acquisition as open space or open land.

11 "Open space plan" means the written plan adopted by the
12 board to implement an open space program and includes properly
13 adopted amendments or additions to the plan.

14 "Open space program" means the acquisition of the fee or
15 of a lesser right or interest in tracts of open land in the
16 township for open space purposes.

17 "Open space purposes" includes (i) the preservation and
18 maintenance of open land, scenic roadways, and pathways; (ii)
19 the holding of real property described in clause (i), with or
20 without public access, for the education, pleasure, and
21 recreation of the public or for other open space values; (iii)
22 the preservation of portions of that property in their natural
23 condition and the development of other portions of that
24 property, including development for agricultural purposes;
25 (iv) the management and use of that property in a manner and
26 with restrictions that will leave it unimpaired for the

1 benefit of future generations; and (v) otherwise promoting the
2 conservation of the nature, flora and fauna, natural
3 environment, and natural resources of the township.

4 (Source: P.A. 91-641, eff. 8-20-99.)

5 (60 ILCS 1/115-55)

6 Sec. 115-55. Acquisition of open land.

7 (a) The board may acquire by gift, legacy, purchase,
8 condemnation in the manner provided for the exercise of the
9 right of eminent domain under the Eminent Domain Act and
10 except as otherwise provided in this subsection, lease,
11 agreement, or otherwise the fee or any lesser right or
12 interest in real property that is open land and may hold that
13 property with or without public access for open space, scenic
14 roadway, pathway, outdoor recreation, or other conservation
15 benefits. No township in a county having a population of more
16 than 150,000 but not more than 250,000 has authority under
17 this Article to acquire property by condemnation, and no other
18 township has authority under this Article to acquire by
19 condemnation (i) property that is used for farming or
20 agricultural purposes; (ii) property that is situated within
21 the corporate limits of a municipality or contiguous to one or
22 more municipalities unless approval to acquire the property by
23 condemnation is obtained under Section 115-30 or 115-35; (iii)
24 property upon which development has commenced; or (iv)
25 property owned by a religious organization, church, school, or

1 charitable organization exempt from federal taxation under
2 Section 501(c)(3) of the Internal Revenue Code of 1986 or
3 similar provisions of any successor law, or any other
4 organization controlled by or affiliated with such a religious
5 organization, church, school, or charitable organization.

6 (a-5) Open land acquired in fee for an open space plan by a
7 township must be held by the township, unless leased or
8 disposed of as provided in Sections 115-90, 115-95, and
9 115-97, and used by the township or lessee for open space
10 purposes.

11 (b) For purposes of this Section:

12 (1) "Development" of property is deemed to have
13 commenced if (i) at least 30 days before the filing of a
14 petition under Section 115-10, an application for a
15 preliminary plan or preliminary planned unit development
16 has been filed with the applicable governmental entity or,
17 if neither is required, a building permit has been
18 obtained at least 30 days before the filing of a petition
19 under Section 115-10; (ii) mass grading of the property
20 has commenced; and (iii) within 180 days of the date the
21 open space plan is recommended for approval by the board
22 under Section 115-5 or by petition of the voters under
23 Section 115-20, 115-30, or 115-35, the installation of
24 public improvements has commenced.

25 (2) "Contiguous" means contiguous for purposes of
26 annexation under Article 7 of the Illinois Municipal Code.

1 (3) Real property is deemed used for farming or
2 agricultural purposes if it is more than 10 acres in area
3 and devoted primarily to (i) the raising and harvesting of
4 crops, (ii) the feeding, breeding, and management of
5 livestock, (iii) dairying, or (iv) any other agricultural
6 or horticultural use or combination of those uses, with
7 the intention of securing substantial income from those
8 activities, and has been so used for the 3 years
9 immediately preceding the filing of a condemnation action.
10 Real property used for farming or agricultural purposes
11 includes land devoted to and qualifying for payments or
12 other compensation under a soil conservation program under
13 an agreement with an agency of the federal government and
14 also includes the construction and use of dwellings and
15 other buildings customarily associated with farming and
16 agricultural uses when associated with those uses.

17 (c) If a township's acquisitions of open land, or
18 interests in open land when combined with other lands in the
19 township held for open space purposes by other governmental
20 entities, equals 30% of the total acreage of the township,
21 then the township may not acquire additional open land by
22 condemnation.

23 (d) Any parcel of land that is included in an open space
24 plan adopted by a township that has not been acquired by the
25 township under this Section within 3 years, or within 2 years
26 with respect to existing open space programs, after the later

1 of (i) July 29, 1988, or (ii) the date of the passage of the
2 referendum may not thereafter be acquired by condemnation by
3 the township under this Section, except that if an action in
4 condemnation to acquire the parcel is filed under this Section
5 within that 3 year or 2 year period, as applicable, the parcel
6 may be acquired by condemnation by the township
7 notwithstanding the fact that the condemnation action may not
8 be concluded within the 3 year or 2 year period, as applicable.
9 Notwithstanding the foregoing, if a parcel of land cannot be
10 acquired by condemnation under subsection (a) because of its
11 use for farming or agricultural purposes, the 3 year or 2 year
12 period, as applicable, shall be tolled until the date the
13 parcel ceases to be used for farming or agricultural purposes.
14 Notwithstanding the foregoing, the fee or any lesser right or
15 interest in real property that is open land may be acquired
16 after the 3 year or 2 year period, as applicable, by any means
17 authorized under subsection (a) other than condemnation.

18 (Source: P.A. 94-1055, eff. 1-1-07.)

19 (60 ILCS 1/115-90)

20 Sec. 115-90. Lease of lands. The board may lease open
21 space that is a part of the township's open space plan ~~land~~ for
22 a period not longer than 50 years from the date of the lease to
23 the federal government, a state government, or a local
24 government ~~a responsible person, firm, or corporation~~ for
25 construction, reconstruction, alteration, renewal, equipment,

1 furnishing, extension, development, operation and maintenance
2 of lodges, housekeeping and sleeping cabins, swimming pools,
3 golf courses, campgrounds, sand beaches, marinas, agricultural
4 purposes, convention and entertainment centers, roads and
5 parking areas, and other related buildings and facilities. In
6 any lease of land leased under this Section, upon expiration
7 of the lease title to all structures on the leased land shall
8 be vested in the township. The changes made to this Section by
9 this amendatory Act of the 103rd General Assembly do not
10 affect any lease entered into on or before the effective date
11 of this amendatory Act of the 103rd General Assembly.

12 (Source: P.A. 88-670, eff. 12-2-94.)

13 (60 ILCS 1/115-95)

14 Sec. 115-95. Lease of buildings or facilities. The board
15 may lease to the federal government, a state government, or a
16 local government any building or facility constructed,
17 reconstructed, altered, renewed, equipped, furnished,
18 extended, developed, and maintained by the township on open
19 space that is a part of the township's open space plan to a
20 responsible person, firm, or corporation for operation or
21 development, or both, and maintenance for a period not longer
22 than 20 years from the date of the lease. The changes made to
23 this Section by this amendatory Act of the 103rd General
24 Assembly do not affect any lease entered into on or before the
25 effective date of this amendatory Act of the 103rd General

1 Assembly.

2 (Source: P.A. 88-670, eff. 12-2-94.)

3 (60 ILCS 1/115-97 new)

4 Sec. 115-97. Disposition of open space.

5 (a) A township board may not sell, convey, donate, or
6 otherwise dispose of any part of open space without referendum
7 approval by the majority of the voters of the township voting
8 on the question at a regular election. The board may certify
9 the question of disposition of property to the appropriate
10 election authority only if the board approves the question by
11 at least a two-thirds majority of the board members. The
12 referendum shall be conducted consistent with the referendum
13 procedures under Section 115-20.

14 (b) Notwithstanding any other provision of law, if a
15 township dissolves or is consolidated or merged or the
16 boundaries of the township are altered, any open space
17 affected by that action shall continue to be used as required
18 in the open space plan unless the open space is disposed of
19 using the same procedures required under subsection (a) by the
20 board of the unit of local government in control of that open
21 space.