

METRO 2025 LEGISLATIVE ISSUE IDENTIFICATION

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ISSUE: Recreational Immunity

BACKGROUND:

All 50 states have enacted statutes that confer some degree of liability protection to landowners who allow the public to use their land for recreational purposes. This is referred to as recreational immunity.

In Oregon, the Oregon Public Use of Lands Act passed in 1995 with a goal of encouraging public and private owners of land to make their land available to the public for recreational purposes. The Act's purpose was to limit the liability of landowners that made their land available without charge if a person was injured while using the land for recreational purposes.

The Act increased the availability of land for free recreation by limiting liability for cities, counties, parks, schools and private owners, including farmers and timber companies, that allow hunters, anglers, hikers, mountain bikers and other members of the public to use or traverse their lands at no charge.

Fields v. Newport Changes

In 2023, the Oregon Court of Appeals issued an opinion in *Fields v. Newport* that changed immediately available relief for cities, counties, and owners of private property. The plaintiff was injured while walking her dog on a city-improved trail system that provided access to a non-city recreational area, i.e. a state beach. Although the court affirmed the notion of recreational immunity, it remanded the case to the trial court for the jury to determine the question of whether the plaintiff's primary purpose for using the improved trail was "recreational" in nature. If so, then state law confers immunity on the city. Conversely, if the plaintiff's purpose was not recreational – for example, only using the trail to access the beach – then the city may not be able to avail itself of immunity under state law because the trail was improved. State statute only confers immunity to unimproved trails leading to recreational areas.

The Court of Appeals' decision brought into question the application of recreational immunity for public and private landowners. Namely, whether immunity applies when the recreational user was not primarily "recreating" as defined by statute, but instead, using the trail or area to access another location for recreation. It also raised a common and related question of whether immunity should extend to an "improved" trail system.

The court's interpretation of "recreational immunity" exposed public and private landowners to new risks, allowing for public users to argue that they were not "recreating" and therefore not prohibited from bringing a lawsuit in the event of injury.

RECOMMENDATION: Support legislation that addresses recreational immunity for local governments, including lifting the sunset on recent fixes.

LEGISLATIVE HISTORY:

The *Newport* decision garnered severe criticism from local governments, land trusts, and other landowners of recreational spaces. CIS Oregon, an insurance company for local governments, also expressed deep concern of the Court’s opinion and recommended that local governments consider closing trails until the Oregon Legislature implemented a fix.

In response, due in part to local governments’ collective efforts, the Oregon Legislature passed Senate Bill 1576 (2024). The legislation sought to bolster and affirm recreational immunity. The bill modified Oregon’s recreational immunity law in three important ways:

1. The bill adds to the definition of “recreational purposes,” which now extends to “walking, running, and bicycling,” in addition to other recreational activities listed in ORS 105.672. Ideally, these new activities would capture a scenario like the one in *Newport*, where a public user is “walking” to access another recreational area. Walking should now be treated as being undertaken with a “recreational purpose,” which is subject to immunity under ORS 105.682-.688.
2. The bill extended recreational immunity to “improved” right of way that is designed or maintained to provide access for recreational purposes, subject to certain limitations. This captures trails and areas where a local government has improved the land; however, the purpose of the improvements and right of way must still be for recreational purposes.
3. The bill replaced “city” with “local government,” as specifically defined under ORS 174.116. That latter statute defines “local government” as inclusive of cities, counties, and local service districts. Importantly, then, the bill expressly affords recreational immunity under ORS 105.668 to special districts.

The bill sunsets January 2, 2026. After that date, the language under ORS 105.668, .672, and .688 will revert to its original form. This temporary fix to recreational immunity provides time for the Legislature – and interested groups – to figure out a long-term solution. A workgroup on recreational immunity met during the interim. However, no agreement was reached for long term fixes to recreational immunity.

OTHER INTERESTED PARTIES:

Key parties with a high level of interest include local governments both individually and through the League of Oregon Cities (LOC) and the Association of Oregon Counties (AOC); persons and companies in the parks and recreation field both individually and through the Oregon Parks and Recreation Association (OPRA); the Oregon Trails Coalition and many other nature organizations.

IMPACT IF PROPOSED ACTION OCCURS:

Encourage land managers to keep trails open to the public.

Provide landowners with the clarity necessary to keep planned trail improvement and development projects on track for the benefit of the public and for the preservation of sensitive habitats.

Ensure that access to recreation areas is equitable by providing land managers basic protections for trail improvements that increase access for a broad range of physical abilities.

Support local outdoor recreation and tourism economies.

Ensure that the limited public resources and taxpayer dollars are not spent on fighting lawsuits and/or on measures that shield landowners from liability. Instead, dollars can be spent on park and trail maintenance, management, and development that directly benefits the public.

RACIAL EQUITY IMPACTS

N/A

CLIMATE IMPACTS

N/A