



Recreational Aviation Foundation
Preserving, Maintaining, and Creating Recreational Airstrips
1711 West Collage St. Bozeman, MT 59715
www.theraf.org

MEASURE: HB 2016
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HOUSE TRANS & ECON DEV
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SUBMITTED BY: B KAY



April 16, 2013

Representative Tobias Read, Chairman
House Transportation and Economic Development Committee,
Oregon State House of Representatives

Representative Cliff Bentz, Vice Chairman
House Transportation and Economic Development Committee,
Oregon State House of Representatives

Representative Vicki Berger, Sponsor, HB2016
Oregon State House of Representatives

Dear Representatives Read, Bentz, and Berger:

Two letters of objection to HB2016 have been filed by David Sugerman of the Oregon Trial Lawyers Association and Gregory Zeuthen, attorney. The RAF is submitting the following discussion concerning their salient points against the proposed legislation:

Mr. Sugerman writes: ***"What may not be apparent to consumers and landowners is that qualifying for immunity means opening the property to all recreational purposes."*** and Mr. Zeuthen writes: ***"in order for the landowner to have immunity under this bill, the airport must be open to the general, non-flying public for purposes that are inconsistent with general aviation."*** And he further states: ***"Once the property is opened to the flying public, and defined as recreational for immunity purposes, it must be opened to all other types of public uses in order for the immunity to apply."***

RAF response --- HB2016 is a clarification to the existing RUS only; it does not change the requirement that recreational users of private land must obtain the owner's permission to recreate on that land. Additionally, privately owned airstrips are registered with the FAA by the owner as either "non-public use", or "public use". If classified as non-public use, they are identified on aeronautical charts with an "R". This FAA designation indicates the airport is privately owned and pilots must have specific permission from the landowner to use the airstrip. These non-publicly owned airstrips are not required to be opened to the "flying public" except on an individual, prior permission basis, or in the case of an aircraft emergency. HB2016 does not override, augment, or address, federally mandated aviation regulations.

Mr. Sugerman further states: ***"Families could choose to have a cook out on the landing strip. ----- Unintended hazards- By inviting recreational users on to the land, the legislation creates unintended hazards. Airplanes and family camping do not mix."***

RAF response --- Recreational aviation started in the United States prior to the 1920s, when it was discovered that airplanes are not only fun, but can also be an alternate method of

transportation to access recreational opportunities, including many of those listed in the OR 105.6732 definitions. The OTLA statement that airplanes and family camping are not compatible will be unwelcome information to the thousands of recreational pilots and their families nation-wide who mix them at every opportunity they can. For an explicit example of this mix, you may go to this video: <https://vimeo.com/64166798> . Ryan Field is a private airfield (R) and all the participants were required to obtain permission from the owner to attend. This type of gathering and the accompanying aviation commerce would not be happening in MT had they not passed an amendment to their Recreational Use Statute in 2006.

Hopefully, under the existing Oregon RUS, families who choose to have "cook outs" on private land (with the owner's permission) have the common sense not to do it in the middle of a landowner's road, motor cross trail, snowmobile trail, or on the edge of a cliff. Passage of HB 2016 will not change potentially hazardous situations for recreation on private land. Legislating or regulating stupidity will continue to be a challenge.

That being said, no other recreational activity is as strictly regulated, trained for, and operationally disciplined as aviation. Recreational aviation is controlled by Federal Regulations that apply to pilots as well as the airplanes they fly.

RAF general comments: --- Many of the objective arguments outlined by Mr. Sugerman and Mr. Zeuthen appear to be objections to the existing Recreational Use Statute. If the Oregon Trial Lawyers Association is objecting to the wording of the existing statute, they can instigate a campaign to change the statute or strike it from state law.

An Oregon Court (see Kelly v. Hochberg, 2009, 2010) has already ruled that the existing statute's definition of "recreational purposes" includes forms of recreational travel, such as hiking, boating, and waterskiing; indicating that the legislature contemplated that some forms of travel fit within the scope of "recreational purposes." Thus, "travel itself is the recreation." HB2016 affirms and defines that recreational aviation activities are included in the recognized list of definitions.

The OTLA objections intimate that HB2016 is an aviation issue. It is not. It is a landowner's issue. It also is a clarification to an existing statute that has had economic benefits for the state since its adoption. Passage of HB2016 will further increase recreationally derived commerce in Oregon.

Since aviation activity within Oregon has the potential to increase with the passage of HB2016, the potential for litigation involving pilots, engine manufacturers, airframe manufacturers, fuel suppliers, etc. may also increase. One could make the argument that passage of this bill may benefit members of the Oregon Trial Lawyers Association. The trial lawyers in 19 other states have recognized this potential and have not objected to adding the clarification to their individual state's Recreational Use Statutes.

Sincerely,

Bob Kay
RAF National Recreational Use Statute Focal and Washington State RAF Liaison