

# House Bill 2854

Sponsored by COMMITTEE ON BUSINESS AND LABOR

## SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced**.

Eliminates limitation of liability for owner of land used for trail or recreational purposes when owner is public body.

## A BILL FOR AN ACT

1  
2 Relating to immunity of public bodies; creating new provisions; amending ORS 105.668, 105.672,  
3 105.682 and 105.688; and repealing ORS 105.699.

4 **Be It Enacted by the People of the State of Oregon:**

5 **SECTION 1.** ORS 105.668 is amended to read:

6 105.668. (1) As used in this section:

7 (a) "Structures" means improvements in a trail, including, but not limited to, stairs and bridges,  
8 that are accessible by a user on foot, on a horse or on a bicycle or other nonmotorized vehicle or  
9 conveyance.

10 (b) "Unimproved right of way" means a platted or dedicated public right of way over which a  
11 street, road or highway has not been constructed to the standards and specifications of the city with  
12 jurisdiction over the public right of way and for which the city has not expressly accepted respon-  
13 sibility for maintenance.

14 (2) **Except as provided in subsection (4) of this section**, a personal injury or property damage  
15 resulting from use of a trail that is in a public easement or in an unimproved right of way, or from  
16 use of structures in the public easement or unimproved right of way, by a user on foot, on a horse  
17 or on a bicycle or other nonmotorized vehicle or conveyance does not give rise to a private claim  
18 or right of action based on negligence against:

19 [(a) A city with a population of 500,000 or more;]

20 [(b) The officers, employees or agents of a city with a population of 500,000 or more to the extent  
21 the officers, employees or agents are entitled to defense and indemnification under ORS 30.285;]

22 [(c)] (a) The owner of land abutting the public easement, or unimproved right of way, in a city  
23 with a population of 500,000 or more; or

24 [(d)] (b) A nonprofit corporation and its volunteers for the construction and maintenance of the  
25 trail or the structures in a public easement or unimproved right of way in a city with a population  
26 of 500,000 or more.

27 (3) Notwithstanding the limit in subsection (2) of this section to a city with a population of  
28 500,000 or more, by adoption of an ordinance or resolution, a city or county to which subsection (2)  
29 of this section does not apply may opt to limit liability in the manner established by subsection (2)  
30 of this section for:

31 [(a) The city or county that opts in by ordinance or resolution;]

**NOTE:** Matter in **boldfaced** type in an amended section is new; matter [*italic and bracketed*] is existing law to be omitted.  
New sections are in **boldfaced** type.

1       **[(b) The officers, employees or agents of the city or county that opts in to the extent the officers,**  
2 **employees or agents are entitled to defense and indemnification under ORS 30.285;]**

3       **[(c) (a) The owner of land abutting the public easement, or unimproved right of way, in the city**  
4 **or county that opts in by ordinance or resolution; and**

5       **[(d) (b) A nonprofit corporation and its volunteers for the construction and maintenance of the**  
6 **trail or the structures in a public easement or unimproved right of way in the city or county that**  
7 **opts in.**

8       (4) The immunity granted by this section from a private claim or right of action based on  
9 negligence does not grant immunity from liability:

10       (a) *[Except as provided in subsection (2)(b) or (3)(b) of this section,]* To a person that receives  
11 compensation for providing assistance, services or advice in relation to conduct that leads to a  
12 personal injury or property damage.

13       (b) For personal injury or property damage resulting from gross negligence or from reckless,  
14 wanton or intentional misconduct.

15       (c) For an activity for which a person is strictly liable without regard to fault.

16       **(d) To a public body as defined in ORS 174.109.**

17       **SECTION 2.** ORS 105.672 is amended to read:

18       105.672. As used in ORS 105.672 to 105.696:

19       (1) “Charge”:

20       (a) Means the admission price or fee requested or expected by an owner in return for granting  
21 permission for a person to enter or go upon the owner’s land.

22       (b) Does not mean any amount received from a public body in return for granting permission for  
23 the public to enter or go upon the owner’s land.

24       (c) Does not include *[the fee for a winter recreation parking permit or any other]* a parking fee  
25 of \$15 or less per day.

26       (2) “Harvest” has that meaning given in ORS 164.813.

27       (3) “Land” includes all real property, whether publicly or privately owned.

28       (4) “Owner” means the possessor of any interest in any land, such as the holder of a fee title,  
29 a tenant, a lessee, an occupant, the holder of an easement, the holder of a right of way or a person  
30 in possession of the land.

31       (5) “Recreational purposes” includes, but is not limited to, outdoor activities such as hunting,  
32 fishing, swimming, boating, camping, picnicking, hiking, nature study, outdoor educational activities,  
33 waterskiing, winter sports, viewing or enjoying historical, archaeological, scenic or scientific sites  
34 or volunteering for any public purpose project.

35       (6) “Special forest products” has that meaning given in ORS 164.813.

36       (7) “Woodcutting” means the cutting or removal of wood from land by an individual who has  
37 obtained permission from the owner of the land to cut or remove wood.

38       **SECTION 3.** ORS 105.682 is amended to read:

39       105.682. (1) Except as provided by *[subsection (2)]* **subsections (2) and (3)** of this section, and  
40 subject to the provisions of ORS 105.688, an owner of land is not liable in contract or tort for any  
41 personal injury, death or property damage that arises out of the use of the land for recreational  
42 purposes, gardening, woodcutting or the harvest of special forest products when the owner of land  
43 either directly or indirectly permits any person to use the land for recreational purposes, gardening,  
44 woodcutting or the harvest of special forest products. The limitation on liability provided by this  
45 section applies if the principal purpose for entry upon the land is for recreational purposes, gar-

1 dening, woodcutting or the harvest of special forest products, and is not affected if the injury, death  
 2 or damage occurs while the person entering land is engaging in activities other than the use of the  
 3 land for recreational purposes, gardening, woodcutting or the harvest of special forest products.

4 (2) This section does not limit the liability of an owner of land for intentional injury or damage  
 5 to a person coming onto land for recreational purposes, gardening, woodcutting or the harvest of  
 6 special forest products.

7 **(3) This section does not limit the liability of an owner of land that is a public body as**  
 8 **defined in ORS 174.109.**

9 **SECTION 4.** ORS 105.688 is amended to read:

10 105.688. (1) Except as specifically provided in ORS 105.672 to 105.696, the immunities provided  
 11 by ORS 105.682 apply to:

12 (a) All land, including but not limited to land adjacent or contiguous to any bodies of water,  
 13 watercourses or the ocean shore as defined by ORS 390.605;

14 (b) All roads, bodies of water, watercourses, rights of way, buildings, fixtures and structures on  
 15 the land described in paragraph (a) of this subsection;

16 (c) All paths, trails, roads, watercourses and other rights of way while being used by a person  
 17 to reach land for recreational purposes, gardening, woodcutting or the harvest of special forest  
 18 products, that are on land adjacent to the land that the person intends to use for recreational pur-  
 19 poses, gardening, woodcutting or the harvest of special forest products, and that have not been im-  
 20 proved, designed or maintained for the specific purpose of providing access for recreational  
 21 purposes, gardening, woodcutting or the harvest of special forest products; and

22 (d) All machinery or equipment on the land described in paragraph (a) of this subsection.

23 (2) The immunities provided by ORS 105.682 apply to **an owner of land that is not a public**  
 24 **body** if the owner transfers an easement to a public body to use the land.

25 (3) Except as provided in subsections (4) to (7) of this section, the immunities provided by ORS  
 26 105.682 do not apply if the owner makes any charge for permission to use the land for recreational  
 27 purposes, gardening, woodcutting or the harvest of special forest products.

28 (4) If the owner charges for permission to use the owner's land for one or more specific recre-  
 29 ational purposes and the owner provides notice in the manner provided by subsection (8) of this  
 30 section, the immunities provided by ORS 105.682 apply to any use of the land other than the activ-  
 31 ities for which the charge is imposed. If the owner charges for permission to use a specified part  
 32 of the owner's land for recreational purposes and the owner provides notice in the manner provided  
 33 by subsection (8) of this section, the immunities provided by ORS 105.682 apply to the remainder of  
 34 the owner's land.

35 (5) The immunities provided by ORS 105.682 for gardening do not apply if the owner charges  
 36 more than \$25 per year for the use of the land for gardening. If the owner charges more than \$25  
 37 per year for the use of the land for gardening, the immunities provided by ORS 105.682 apply to any  
 38 use of the land other than gardening. If the owner charges more than \$25 per year for permission  
 39 to use a specific part of the owner's land for gardening and the owner provides notice in the manner  
 40 provided by subsection (8) of this section, the immunities provided by ORS 105.682 apply to the re-  
 41 mainder of the owner's land.

42 (6) The immunities provided by ORS 105.682 for woodcutting do not apply if the owner charges  
 43 more than \$75 per cord for permission to use the land for woodcutting. If the owner charges more  
 44 than \$75 per cord for the use of the land for woodcutting, the immunities provided by ORS 105.682  
 45 apply to any use of the land other than woodcutting. If the owner charges more than \$75 per cord

1 for permission to use a specific part of the owner's land for woodcutting and the owner provides  
2 notice in the manner provided by subsection (8) of this section, the immunities provided by ORS  
3 105.682 apply to the remainder of the owner's land.

4 (7) The immunities provided by ORS 105.682 for the harvest of special forest products do not  
5 apply if the owner makes any charge for permission to use the land for the harvest of special forest  
6 products. If the owner charges for permission to use the owner's land for the harvest of special  
7 forest products, the immunities provided by ORS 105.682 apply to any use of the land other than the  
8 harvest of special forest products. If the owner charges for permission to use a specific part of the  
9 owner's land for harvesting special forest products and the owner provides notice in the manner  
10 provided by subsection (8) of this section, the immunities provided by ORS 105.682 apply to the re-  
11 mainder of the owner's land.

12 (8) Notices under subsections (4) to (7) of this section may be given by posting, as part of a re-  
13 ceipt, or by such other means as may be reasonably calculated to apprise a person of:

14 (a) The limited uses of the land for which the charge is made, and the immunities provided under  
15 ORS 105.682 for other uses of the land; or

16 (b) The portion of the land the use of which is subject to the charge, and the immunities pro-  
17 vided under ORS 105.682 for the remainder of the land.

18 **SECTION 5. ORS 105.699 is repealed.**

19 **SECTION 6. (1) The amendments to ORS 105.668 by section 1 of this 2017 Act apply to**  
20 **ordinances and resolutions adopted before, on or after the effective date of this 2017 Act.**  
21 **Any ordinance or resolution adopted by a city or county under ORS 105.668 (3) before the**  
22 **effective date of this 2017 Act does not limit the liability of the city or county, or its officers,**  
23 **employees or agents, on or after the effective date of this 2017 Act.**

24 **(2) The amendments to ORS 105.668, 105.672, 105.682 and 105.688 by sections 1 to 4 of this**  
25 **2017 Act and the repeal of ORS 105.699 by section 5 of this 2017 Act apply only to causes of**  
26 **action arising on and after the effective date of this 2017 Act.**

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