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Honorable Chair Prozanski, Vice-Chair Thatcher, and members of the Joint Committee on Judiciary

I'm writing to endorse the use of SB 179 to thoroughly recraft our recreation immunity statute to effectuate its original intent. Without a workgroup product, doing so this session will be challenging. If it proves impossible, I think the sunset should merely be removed, and the pursuit should be held over for 2027. Attached, I've provided a work summary and a reconstructed, easily navigable section order for the statutes, which contains my proposals. Debate is critical and I expect specific phrases and clauses will benefit from that exchange, which explains the draft nature of my writing.

Every state in the US has a form of recreation use statute. This collection of state laws, appeals court, and supreme court opinions has formed a large recreation immunity laboratory. We can take lessons from these other labs about how our legislature can better inform our courts regarding visitor intent and other features. Especially in this unique corner of the law, if the legislature can contemplate, *before the people*, scenarios, and conditions that either effectuate or undermine a principle, it should do so – and not pass the buck to the courts to make their best guesses later. The intended immunity is nullified if the legislature does not do this work but instead leaves it to the courts. The unique underlying principle is that the landowner cannot bear the burden or even the risk of a fact-determining judicial process. The quid pro quo opportunity to recreate for free, in exchange for immunity from claims of ordinary negligence, can only serve the people of Oregon if the facts surrounding most claims of ordinary negligence are not in dispute and a landowner can succeed in a motion for summary judgment. The legislature can choose to examine and clarify the law as it relates to specific but encompassing scenarios or decide not to. A recreation immunity framework that fails a motion for summary judgment every two years, which is now the case, is no immunity at all – the expected outcome of too little guidance.

We must do that work today to reduce facts in dispute after a future claim of ordinary negligence. It would be invaluable to pressure test, or red-team statutory language, properly define terms and conditions, and look to the 50 state laboratories to learn where legislatures have fallen short.

I've considered switching the term "purposes" with "activity" as a visitor intent solution, but that'd be a mistake. In courts elsewhere, the theory that the *activity* (e.g., bicycling) *converts* the *intent* to recreation has not passed the standard of reasonableness - leaving the immunity exposed - in fact, this exposure will keep the question of intent alive for future courts. Suppose the most efficient way to get groceries on your only transportation, your bicycle, suddenly becomes using a shortcut across a vacant field; no reasonable man (judge) can call that recreation. Changing "purposes" to "activity" may have other benefits, but the move should not be relied upon or evidenced in this statutory construction process as this legislature's solution to the problem of intent.

As hinted, courts can and are more frequently examining statutory construction to interpret legislation. That's also why messing with the *exemplary list* of activities now (to solve a visitor intent problem or otherwise) by adding **walking, running, and bicycling** is a mistake. It undermines that list's exemplary nature despite the "including, but not limited to" clause. Suppose a legislature adds recreation use-types to solve for past cases when the correct statutory solution is evident and available. In that case, it undermines the claim that the list is *exemplary* - creating a self-made, unnecessary crack in that shield. What will be a perceptible shift toward this as an *exclusive list* is evidenced by the very real fact that one group, motorized recreation, and other recreation use-types (now and into the future) will feel exposed

and clamor for inclusion on that list. A legislature should not advertise that weakness to the reviewing court. “including but not limited to...” has specific and powerful meaning in law. Broadcasting a legislature’s lack of confidence in this term of art undermines a fundamental pillar of the statute.

The solution is to add the activity “to traverse in order to pursue” the “purposes” to our statute. Other states have realized this solves many, many points of exposure. We cannot wait for *when* (not if) the next visitor intent case comes. The solution is right in front of us; future courts will be able to see that it was available and that the legislature consciously chose not to reach for it. Landowners frequently allow others to cross “the land” to access the “purposes.” Whether from one parcel to the next, from one owner to the next owner, to the next owner, or from one *part of a parcel* to another *part of a parcel*. “Traversing” is a *means and method-neutral*, and a *geographically neutral* way to deal with the problem: Is a hunter *recreating* when traversing land on a trail (from which they may not shoot) to a hunting blind from where they *may* shoot? Is a person *recreating* who pulled the car over to traverse a short trail, starting on a trailhead on ODOT right of way, then crossing ODF forest land, merely to finally arrive at a private land waterfall for viewing? Is someone recreating while riding a future, now unimaginable, land traversing mechanism across a field to get to the beach? If you are traversing to pursue the “purposes,” you are presumed to be engaging in those “purposes.” It is straightforward and flows from the core principle.

My drafts contain more to debate, but our statute has become vulnerable because of “simple” patches over the years. It has not kept up with judicial lessons from the recreation immunity landscape and is no longer compact, strong enough, or coherently organized. The courts have shown they need and deserve handrails on both sides of the trail, and we should convene a functional workgroup to deliver that guidance. We should organize the support of the people to bring their energy, attention, *and* a campaign because going part way now would be a definitive disservice.

Thank you,

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Summary of proposed changes to Oregon’s recreation use statute

Throughout:

Logically re-order the content of each statute and section. Block up language and sequence those blocks as follows: First, the purpose statement, then the assembled definitions, then the application and exclusions clauses, then “no change in/diminishment of rights,” and so on. Condense and move “upward” repeating clauses, which best serve the purpose statement if applied to multiple sections. Reduce clumsy cannon problems by switching to the reference style when practical. Delete or clarify open-ended clauses that beg for reviewer interpretation.

Section highlights:

105.668

Section (1), (a)

- Delete the exclusion of motorized vehicles or conveyances. Properly define the “land” as non-roadway. No logical justification exists/remains for discriminating between these use-types. Thousands of structures in Oregon carry motorized recreation activities of some kind. The use, form, and function of a motorcycle bridge (or an e-bike bridge) vs. a mountain bike or equestrian bridge are identical.

Section (2)

- Same as above
- Re-examine the city population limit purpose and structure. Isolated block?

Section (4)

- Move all of section (4) to a later “applies to” section
-

105.672 – definitions

- Locate all definitions in one place. Repair and clarify terms. Review other case-law and explore hypothetical scenarios not yet litigated. See draft document.
-

105.676 Purpose statement.

- Move to the front of the statutory block.
 - After the list of purposes, mid-paragraph, add “or to traverse their land to pursue such purposes.”
 - Trim the last sentence, utilizing the reference phrase “such purposes.”
-

105.682 – Applies to

- Immediately following the purpose and definitions, as opening guidance, instruct that the reviewer shall interpret the statute to “effectuate its purpose.” Add a clause to nullify certain previous case law.
- Completely clean and rebuild the structure of these sections
- Incorporate traversing concept
- Visitors who spectate “the purposes” are deemed to be engaging in “the purposes”. - not just recreation, but the harvest of natural resources.
- Free-of-charge access for these purposes does not convey the legal status of an invitee or social guest.
- Free-of-charge access for these purposes does warrant that the land is appropriate for these purposes.
- Installation of a warning sign does not create a duty to warn with other warning signs.
- Add “grades” to the list of things on the land to which immunities apply
- Add immunity for the landowner who, without charge, “guides, supervises or participates” in purposes
- Move here: Applies to “machinery located on the land.”
- Take from the existing natural resource harvest section the *notice* provision for identification of certain parts of land that require a charge from parts that do not require a charge and move it here. Make this clause/device also applicable to recreation purposes.
- Draft cleaner “means of notification” of the preceding concept
- In a new “does not apply” section in this block, capture the typical exclusions
- **KEY:** Locate here the exclusion for injuries occurring on a right of way that is a Hwy under 810.010
- See draft.

105.688 - Certain “applies to” clauses

- The existing language in section (1), (c) mistakenly restricts immunity to land the visitor “uses to reach” which is **adjacent**. Why only **adjacent**? That error is contrary to legislative intent.
- Convert language that provides immunity on land that a visitor “uses to reach such purposes” to language that provides immunity on land that a visitor “traverses to pursue such purposes”; this will cover traversing (in whatever manner) the land where the purposes occur, and any other land traversed to access the purposes. Free access to cross various parcels **or parts** of parcels to pursue such purposes occurs every day, and it is necessary to clearly define that immunity.
- The existing language eliminates the immunity for land used to reach “such purposes” if that land has been improved, designed, or maintained specifically to provide that access. That means virtually all trails. This error is contrary to legislative intent and sloppily open-ended. Each word, “*Improved*”, “*designed*,” and “*maintained*,” means what? These terms form a de facto attack on the principle at issue. Delete this and the inelegant 2023

workaround to this problem. Instead, clarify that the immunity does not apply if the land is a highway under 810.010 on a public right of way.

- Turn this block of language into an exclusive natural resource harvest block.
- Move all but the natural resource harvest clauses into a preceding, single “applies to” section.
- Simplify language and reduce redundancy.
- Instead of freezing these fees in statute, which were set in 2009, the statute should index them to the official state CPI from each preceding year, starting with the fee amounts the legislature set in 2009.

105.692 No change in rights

Each section

- Where applicable, change to a *reference style*. Refer to “the purposes outlined in XXX.XXX” instead of an *explicit style*, which re-states the “purposes.”

Re-order for logic, hierarchy, clarity

105.696

Move this language into 105.692, above, then delete 105.696. Creating one “no change in rights” block.

105.699 State Forester rule-making

- No functional changes

OR Rev Stat § 105.676 (2023) (FUTURE: "PURPOSE")

The Legislative Assembly hereby declares it is the public policy of the State of Oregon to encourage owners of land to make their land available to the public for recreational purposes, for gardening, for woodcutting and for the harvest of special forest products **or to traverse their land to pursue such purposes** by limiting their liability toward persons entering thereon for such purposes and by protecting their interests in their land from the extinguishment of any such interest or the acquisition by the public of any right to use or continue the use of such land for **such purposes**[*recreational purposes, gardening, woodcutting or the harvest of special forest products.*][1995 c.456 §2; 2009 c.532 §3]?

As used in ORS 105.672 to 105.696:

- (1) "Recreational purposes" includes, but is not limited to, outdoor activities such as hunting, fishing, swimming, boating, camping, picnicking, hiking, [walking, running, bicycling,]nature study, outdoor educational activities, waterskiing, winter sports, viewing or enjoying historical, archaeological, scenic or scientific sites or volunteering for any public purpose project[.], **and traversing land to reach a separate part or parcel of land for such purposes.**

Either remove the proposed amendment – "walking, running, bicycling" or add: "riding, including animal riding,, and all other types of recreational vehicle riding" (partly borrowed fm Calif.) Goal is to include snowmobile and watercraft (e.g. riding rafting/kayaking – not necessarily boating??) and OHV use.

Obviously not merely crossing land because it's the easiest way to a grocery store.

Obviously not walking on a city sidewalk or cycling on a public highway to go the park because of "state highway" definitions in statute and language about public right of way built to standards – see section 12, below.

(2) "Charge":

- a) Means the admission price or fee requested or expected by an owner in return for granting permission for a person to enter or go upon the owner's land[.] for the purposes given in ORS 105.676 (Purposes statement)
- b) Does not mean any amount received from a public body in return for granting permission for the public to enter or go upon the owner's land.
- c) Does not include:
 - I. The fee for a winter recreation parking permit or any other parking fee of \$15 or less per day. **Why \$15 – it's not a quid pro quo to be on "the land", no matter the \$**
 - II. **The fee for recreation permits or recreation vehicle registrations including but not limited to an ATV permit, vehicle registration, fishing license, or game tag**
 - III. **Administrative fees collected by a public body including but not limited to fees associated with for a permit for an organized event or special use permit**
 - IV. **A gift of game animals or any other product resulting from recreational activity**
 - V. **An indirect nonpecuniary benefit to the landowner or to the property.**
 - VI. **A voluntary donation of money, goods, or services not required for the use of such land.**
 - VII. **A payment received from a nonprofit organization for a recreational agreement.**
 - VIII. **A payment made to purchase or rent products or goods offered for sale or rent on the property, including, but not limited to, a sledding tube, canoeing pad, or maps.**
 - IX. **A payment for the lease of the land to the State, any political subdivision of the State, or a nonprofit corporation, trust, or association.**

- (3) "Land" includes all real property, whether publicly or privately owned.
- (4) "Owner" means:
 - (a) The possessor of any interest in any land, including but not limited to the holder of any legal or equitable title, a tenant, a lessee, an occupant, the holder of an easement, the holder of a right of way, [or] a person in possession of the land, **or a person in possession of the authority to make the land available;**
 - (b) An officer, employee, volunteer or agent of a person described in paragraph (a) of this subsection, while acting within the scope of assigned duties; and
 - (c) A director, partner, general partner, shareholder, limited liability company member, limited liability partner or limited partner of a person described in paragraph (a) of this subsection.
- (5) "Person" means any individual, regardless of age, maturity, or experience, or any corporation, government or governmental subdivision or agency, business trust, estate, trust, partnership, association, or any other legal entity.
- (6) "Local government" has the meaning given that term in ORS 174.116
- (7) "Nonprofit organization" means an organization or association not organized or conducted for pecuniary profit
- (8) "Recreational agreement" means a written authorization granted by an owner to a governmental body or nonprofit organization permitting public access to all or a specified part of the owner's property for any recreational activity."
- (9) "Management" means the entire range of activities, whether undertaken or not by the entity, associated with controlling, directing, allowing, and administering the use, operation, protection, development, repair, and maintenance of private land for public recreational purposes
- (10) "Artificial latent condition" does not include structures associated with recreation use, or management, including but not limited to, bollards, guardrails, grading, ramps, stairs, platforms, stairs, bridges, water control features, and rock-climbing anchors, whether placed by the landowner or others.
- (11) "Structures" means improvements to and upon the land, including, but not limited to, bollards, guardrails, grading, ramps, stairs, platforms, stairs, bridges, water control features, and rock-climbing anchors, whether placed by the landowner or others.
- (12) "Unimproved right of way" means a platted or dedicated public right of way over which a street, road or highway maintained under ORS 810.010 has not been constructed. [to the standards and specifications of the local government with jurisdiction over the public right of way. and for which the local government has not expressly accepted responsibility for maintenance]
- (13) "Harvest" has that meaning given in ORS 164.813
- (14) "Special forest products" has that meaning given in ORS 164.813
- (15) "Woodcutting" means the cutting or removal of wood from land by an individual who has obtained permission from the owner of the land to cut or remove wood.

OR Rev Stat § 105.682 (2023) (FUTURE – “APPLIES TO”:))

- (1) This statute shall be applied and construed to effectuate its general purpose. Prior case law, to the extent they contradict this statute and are more restrictive of the landowner’s immunity shall be considered ineffectual.?
- (2) Except as provided by subsection (2) of this section, and subject to the provisions of ORS 105.688, an owner of land is not liable in contract or tort for any personal injury, death or property damage that arises out of the use of the land for recreational purposes, gardening, woodcutting or the harvest of special forest products, **or to traverse their land to pursue such purposes** when the owner of land either directly or indirectly permits any person to use the land for **such purposes or traverse the land to pursue such purposes**.
- (3) The limitation on liability provided by this section is not affected if the injury, death or damage occurs while the person entering land is engaging in activities other than **such purposes**.
- (4) For the purposes of this provision/statute:
 - (a) Traversing land to access such purposes is presumed to be part of those purposes.
 - (b) Visitors present on the land to spectate or view others engaged in these activities are deemed to be engaging in such activities
 - (c) A landowner who either directly or indirectly permits any person to use the land for these purposes does not:
 - i. Warrant that the land is appropriate for these purposes.
 - ii. Confer upon the visitor the legal status of an invitee, licensee, or social guest to whom a duty of care is owed.
 - iii. Assume responsibility for or incur liability for any injury to person or property caused by an act of omission of such persons.
 - (d) No landowner who either directly or indirectly permits any person to use the land for these purposes owes to such person a duty to:
 - i. Keep the property safe for such purposes.
 - ii. Inspect the property.
 - iii. Give warning of an unsafe condition, use, or activity on the property.
 - (e) Neither the installation of a sign or other form of warning of a dangerous condition, use, or structure nor the failure to maintain or keep any such sign or warning in place shall reduce the immunities provided by this provision/statute. (fm Idaho 36-104)

- (5) Except as specifically provided in ORS 105.672 to 105.696, the immunities provided by ORS 105.682 apply:
- (a) To all land, including but not limited to land adjacent or contiguous to any bodies of water,
 - (b) watercourses or the ocean shore as defined by ORS 390.605;
 - (c) All roads, bodies of water, watercourses, rights of way, **grades**, buildings, fixtures and structures on the land described in paragraph (a) of this subsection;
 - (d) To all machinery or equipment on the land described in paragraph (a) of this subsection.
 - (e) **To a landowner who, without charge, guides, supervises or participates in activities set forth in ORS XXXX (“Purposes”)**
 - (f) **To a** nonprofit corporation and its volunteers for the construction and maintenance of a trail or [the] structure[s] in a public easement or unimproved right of way
 - (g) To land if the owner transfers an easement to a public body to use the land.
 - (h) If the owner charges for permission to use the owner’s land for one or more specific purposes described in section (1) **and the owner provides notice** in the manner provided by subsection (i) of this section, the immunities provided by ORS xxx.xxx apply to any use of the land other than the activities for which the charge is imposed. If the owner charges for permission to use a specified part of the owner’s land for the purposes described in section (1) and the owner provides notice in the manner provided by subsection (i) of this section, the immunities provided by ORS xxx.xxx apply to the remainder of the owner’s land.
- (6) **Notices under subsection (H) of section 5** may be given by posting, as part of a receipt, or by such other means as may be reasonably calculated to apprise a person of:
- (a) The limited uses of the land for which the charge is made, and the immunities provided under ORS 105.682 for other uses of the land; or
 - (b) The portion of the land the use of which is subject to the charge, and the immunities provided under ORS 105.682 for the remainder of the land. [1995 c.456 §4; 1999 c.872 §7; 2001 c.206 §1; 2009 c.532 §2; 2010 c.52 §2]
- (7) The immunities provided by **ORS 105.682** (this statute?) do not apply:
- (a) Except as provided in subsection (2)(b) or (3)(b) of this section, to a person who receives compensation for providing assistance, services, or advice in relation to conduct that leads to personal injury or property damage.
 - (b) For intentional injury or damage to a person coming onto the land
 - (c) For an activity for which the actor is strictly liable without regard to fault.
 - (d) For gross negligence or reckless, wanton or intentional misconduct.
 - (e) **For injury occurring on a right of way that is a highway maintained under ORS 810.010.**
 - (f) If the owner makes any charge for permission to use the land for **such purposes ?** except as provided in ORS 105.688 (Firewood, garden) subsection (f) of section (x)
 - (g) To a person that receives compensation for providing assistance, services, or advice in relation to conduct that leads to a personal injury or property damage except as provided in subsection (2)(b) or (3)(b) **of section xxx.xxx**,. (.officers, employees, or agents. From ..668)

Restated elsewhere

[(A) The right of way has not been improved, designed or maintained for the specific purpose of providing access for recreational purposes, gardening, woodcutting or the harvest of special forest

products; [and] or

(B)(i) The right of way has been improved, designed or maintained to provide access for recreational purposes, gardening, woodcutting or the harvest of special forest products;

(ii) The right of way is not a highway maintained under ORS 810.010; and

(iii) The improvement, design or maintenance was completed in a manner that does not constitute:

(I) Gross negligence or reckless, wanton or intentional misconduct; or

(II) An activity for which the actor is strictly liable without regard to fault; and]

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

OR Rev Stat § 105.688 (2023)(FUTURE: "Limitations for charges for FIREWOOD, GARDENING, SP FOREST PROD")

(1) Except as provided in section (2) of this section, the immunities provided by ORS 105.676 do not apply if the owner:

- a) Charges more than \$25 per year (**CHANGE FIXED DOLLAR - INDEX THE \$75 FROM 2009, USING THE STATE CPI.**) for permission to use the land for gardening.
- b) Charges more than \$75 per cord (**SAME AS ABOVE**) for permission to use the land for woodcutting
- c) Makes any charge for permission to use the land for the harvest of special forest products.

(2) If the owner charges more than the limitations set forth in subsections (a) through (c) of section (1) of this statute for permission to use a specific part or parcel of the owner's land for gardening, woodcutting, or the harvest of special forest products and the owner provides notice in the manner provided by subsection (f) of section (3) of ORS 105.682 ("Applies to") the immunities provided by ORS 105.676 (Purpose) apply to the remainder of the owner's land.

Fixed rate for firewood and gardening should not be locked in statute.

Example: Using Oregon's official CPI calculation, the legislatively intened 2009 rate of \$75 per cord would become \$105.38 in 2024. Change language: b)"Charges more than the State CPI adjustment from \$75 in 2009, to the previous calendar year. (??)

Old. DELETE ALL: (ENGROSSED/CENTRALIZED ELSEWHERE IN THE SECTION)

[(1) Except as provided in subsection (f) of section (1) of ORS xxx.xxx the immunities provided by ORS xxx.xxx do not apply if the owner makes any charge for permission to use the land for, gardening, woodcutting or the harvest of special forest products.

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

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

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

owner's land for woodcutting and the owner provides notice in the manner provided by subsection (8) of this section, the immunities provided by ORS 105.682 apply to the remainder of the owner's land.

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

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

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

(b) The portion of the land the use of which is subject to the charge, and the immunities provided under ORS 105.682 for the remainder of the land.]

[1995 c.456 §4; 1999 c.872 §7; 2001 c.206 §1; 2009 c.532 §2; 2010 c.52 §2]

OR Rev Stat § 105.668 (2023) (FUTURE: ONLY POP LIMIT)

(1) As used in this section:

SECTION 5. ORS 105.668 is amended to read: 105.668. (1) As used in this section:

(MOVED TO DEFINITIONS)

(a) “Local government” has the meaning given that term in ORS 174.116.

[(a)] (b) “Structures” means improvements in a trail, including, but not limited to, stairs and bridges, that are accessible by a user on foot, on a horse or on a bicycle or other nonmotorized vehicle or conveyance.

[(b)] (c) “Unimproved right of way” means a platted or dedicated public right of way over which a street, road or highway has not been constructed to the standards and specifications of the [city] local government with jurisdiction over the public right of way and for which the [city] local government has not expressly accepted responsibility for maintenance.]

Champions for these population limitations need to re-package and integrate for the project. Who are they?

2) In a city with a population of 500,000 or greater, a personal injury or property damage resulting from use of a trail that is in a public easement or in an unimproved right of way, or from use of structures in the public easement or unimproved right of way, by a user on foot, on a horse or on a bicycle or other nonmotorized vehicle or conveyance does not give rise to a private claim or right of action based on negligence against: [(a) A city with a population of 500,000 or more;]

(a) The city;

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

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

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

(3) [Notwithstanding the limit in subsection (2) of this section to a city with a population of 500,000 or more, by adoption of an ordinance or resolution, a city or county] A local government to which subsection (2) of this section does not apply may opt to limit liability in the manner established by subsection (2) of this section by ordinance, resolution, rule, order or other regulation for:

[(a) The city or county that opts in by ordinance or resolution;] (a) The local government; Enrolled Senate Bill 1576 (SB 1576-A) Page 4

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

(c) The owner of land abutting the public easement[,] or unimproved right of way[,] in the city or county that opts in by ordinance or resolution; and] in the local government; or

(d) A nonprofit corporation and its volunteers for the construction and maintenance of the trail or the structures in a public easement or unimproved right of way in the [city or county that opts in] local government.

(MOVE TO “APPLIES TO”)

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

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

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

(c) For an activity for which [a person] the actor is strictly liable without regard to fault.

OR Rev Stat § 105.692 (2023) **No change in rights** Title?

- (1) An owner of land who either directly or indirectly permits any person to use the land for [recreational purposes, gardening, woodcutting or the harvest of special forest products] **the purposes outlined in xxx.xxx-xxxs.xxx** does not give that person or any other person a right to continued use of the land for those purposes without the consent of the owner.
- (2) The fact that an owner of land allows the public to use the land for [recreational purposes, gardening, woodcutting or the harvest of special forest products] **the purposes outlined in xxx.xxx-xxxs.xxx** without posting, fencing or otherwise restricting use of the land does not raise a presumption that the landowner intended to dedicate or otherwise give over to the public the right to continued use of the land.
- (3) Nothing in this section shall be construed to diminish or divert any public right to use land for recreational purposes acquired by dedication, prescription, grant, custom or otherwise existing before October 5, 1973.
- (4) Nothing in this section shall be construed to diminish or divert any public right to use land for woodcutting acquired by dedication, prescription, grant, custom or otherwise existing before October 3, 1979. [1995 c.456 §5; 2009 c.532 §5]
- (5) ***Nothing in this section shall*** Relieve a person using the land of another for [recreational purposes, gardening, woodcutting or the harvest of special forest products] **the purposes outlined in xxx.xxx-xxxs.xxx** from any obligation that the person has to exercise care in use of the land in the activities of the person or from the legal consequences of failure of the person to exercise that care. [1995 c.456 §6; 2009 c.532 §6]

(6) ***Re-order??***

OR Rev Stat § 105.699 (2023) State Forester rulemaking **No substantive change**

The State Forester, under the general supervision of the State Board of Forestry, may adopt any rules considered necessary for the administration of the provisions of ***XXX.XXX to XXX.XXX on state land***

ORS 105.672 to 105.696 on state land. [1979 c.434 §8; 1995 c.456 §7]