Park Master Plan

Appendix B

Recreational Immunity

May 2017
Recreational Immunity Fix
Simple, Politics Less So

By Scott Winkels

When the Oregon Supreme Court ruled in Johnson v. Gibson that land owners were immune from tort liability but employees were not, the court noted that the Oregon Legislature knows full well how to write an immunity from liability but it did not specifically spell out that volunteers, employees or other agents should enjoy that same immunity. While the legislative intent was clear that a land owner, and by extension, their agents should be able to allow recreational access to their land without fear of liability, the court reasoned that plain language of the statute was apparently insufficient to do so.

With a clear indication in the court’s ruling, the League, along with other local government associations and private land owners, has drafted bills that simply add employees, agents and volunteers into the recreational immunity statute. At the time of this writing, the legislative vehicle the League is focused on is SB 327, which is in the Senate Judiciary Committee, chaired by Senator Floyd Prozanski (D-Eugene).

While the language of the bill is simple, the daunting task will be to get through the legislative process. This will include: achieving a positive vote in committee, passage on the floor of the Senate, committee support in the House and an affirmative vote on the House floor with approval of the governor, can be a daunting task (and why lobbyists have jobs).

Absolving a party of liability from injuries is not an issue that the Legislature takes lightly, and the case must be made for its necessity. However, the active engagement of the LOC membership has resulted in significant support of the bill. City leaders presented on this issue during City Hall Week events in September, at City Day at the Capital in February, and through the passage of supportive resolutions over the past several weeks. Those efforts are bearing fruit.

The League anticipates that there will be some legislative activity on SB 327 by the publication date of this edition of Local Focus, but the conversation will by no means be complete. City leaders are encouraged to monitor the LOC Bulletin each Friday and the scheduled legislative webinars (see box below) for updates on this important issue.

Contact: Scott Winkels, LOC Intergovernmental Relations Associate – swinkels@orcities.org

Legislative Webinars

Every other Friday during session, the League will provide briefings on legislation of importance to cities. All webinars start at noon. To register for a webinar, or to watch past webinars, visit www.orcities.org/legislative.

- April 14
- April 28
- May 12
- May 26
- June 9
- June 23
- July 7 (if necessary)
LOC Recreational Immunity Survey Reveals Impacts to Cities

A survey of member cities revealed a high level of concern and uncertainty about the recreational immunity court decision. Twelve city facilities have been closed, accounting for 6 percent of cities that have already been affected. The qualitative results show that many cities are taking precautionary measures to reduce the effect of increased costs and liability concerns. However, these measures are stymied by a high degree of uncertainty and inability to predict the consequences of facility closures. The effect of the loss of recreational immunity, especially in areas dependent on tourist dollars, could be severe.


Survey responses:

"The citizens of Ukiah are outraged that even some part of the park be closed down. We are a very small city and most of the recreation is at the City Park. We have many visitors traveling through Ukiah and the park is the only recreation we have to offer them."

"We have heard employee reaction which could easily lead to paranoia or even quitting of their job."

"The Chamber wanted to install a slide at the city park, but the council said no because of this new ruling."

"If there is not a change to the ruling, we'll have to look to possibly not offering tournaments and events at our sports park. This facility generates an average of $12 million per year in economic impact to the city. Sports tourism is essential to our area and without it there will be hundreds of jobs lost in addition to the loss of growth in development of hotels and other related businesses."

Recreational facilities closed:
3 parks
2 walking trails/bike paths
2 bike/skate parks
1 climbing wall
1 tennis court
1 playground
1 canoe/kayak portage
1 motocross area

Facility Closures by Region

1-2 facilities
3 or more facilities
Recreational Immunity Bill Passes Out of Committee

On a unanimous vote Thursday, the Senate Judiciary Committee, chaired by Senator Floyd Prozanski (D-Eugene), approved a bill to restore recreational immunity, a League priority for this session. SB 327 now moves to the full Senate for a vote and then to the House for further consideration.

The bill would again extend immunity from tort liability to employees, agents and volunteers of a city for injuries resulting from recreational activities. Currently, a land owner who allows recreation on their property free of charge is immune from tort liability, but employees or volunteers who work on the property do not enjoy the same immunity.

Contact: Scott Winkels, Intergovernmental Relations Associate – swinkels@orcities.org

League Opposes Proposed Changes to Least-Cost Contracting

On Wednesday, the House Business and Labor Committee, chaired by Representative Paul Holvey (D-Eugene), held a public hearing on HB 3203. The League testified in opposition to the bill and proposed amendments that would impose additional requirements on contracting agencies, including cities, when they use their own equipment and personnel on specified public improvement projects. The cities of Newport, Portland and Beaverton, along with the Oregon Water Utility Council, also testified in opposition. In addition, several cities submitted written testimony opposing the bill.

HB 3203, with the proposed amendments, would require contracting agencies to complete a detailed cost comparison if the contracting agency does work on a public improvement project.
Good Morning Everyone,

I know I have talked a lot about Recreational Immunity last night, but here is more information for you because now is the time to start writing letters and making phone calls to the State Legislature. The City is asking all community partners to write a letter, send an e-mail or make a phone regarding this important issue.

Attached are four pdf documents that tell you a little more about the Recreational Immunity problem including Resolution 2017.06 passed by City Council on Tuesday evening. The Word document includes points to ponder and the two State Senators where letters, e-mail and phone calls should be directed. Hopefully, you guys feel you have enough information to write a paragraph or two on why you feel restoring Recreational Immunity is important to Oregon. The specific bills we are interested in passing are S.B. 327 and H.B. 2438. Thanks!!

S. Scott McDowell
255 N. Main Street
P.O. Box 188
Brownsville, OR 97327
541.466.5880
admin@ci.brownsville.or.us
Points to Ponder

- Cities, Counties and Special Districts are all part of member insurance pools. Each entity will be paying for claims against their parks which further limits scarce resources for these vital community services.

- Entities will have to say ‘no’ to exposures and risks that have historically been allowed under the Recreational Immunity Law.

- Many community organizations hosting events on public land will have to decide whether to continue due to the additional liability to members of non-profit groups.

- A lot of land is offered protection under the former Recreational Immunity Law that will be made unavailable to the public due to this change.

- Due to future higher premium costs and risk exposure, taking away or limiting Recreational Immunity actually plays out like an unfunded mandate for local governments.

- Unfairly affects and unduly burdens public employees and employment unions who are agents and assigns of their employer. With Recreational Immunity, the new law will hold employees personally liable for decisions that could be legally pursued as mistakes made by those same employees acting in good faith while discharging their employment duties.

- Oregon as we know it will be forever changed. Recreational activities that we all love like hikes by waterfalls, cycling through the mountains and camping on public land will all be too risky in the near future for entities to offer to the public.

- The absence of Recreational Immunity will cause many entities to close facilities to the public and not provide enriching programs that provide unique opportunities to Oregon citizens.

Mr. Prozanski is the Chair of the Senate Judiciary Committee:

Senator Floyd Prozanski

Democrat - District 4 - South Lane and North Douglas Counties
Capitol Phone: 503-986-2704  District Phone: 541-342-2447
Capitol Address: 900 Court St. NE, S-413, Salem, Oregon 97301
District Address: PO Box 11511, Eugene, OR 97440
Email: Sen.FloydProzanski@OregonLegislature.gov
Website: http://www.oregonlegislature.gov/prozanski
Ms. Thatcher is the Vice-Chair of the Senate Judiciary Committee:

Senator Kim Thatcher

Republican - District 13 - Keizer

Capitol Phone: 503-986-3713
Capitol Address: 900 Court St. NE, S-307, Salem, Oregon 97301
Email: Sen.KimThatcher@state.or.us
Website: http://www.oregonlegislature.gov/Thatcher

Provided to Council members and community partners on March 1st, 2017.
RESOLUTION 2017.06

A RESOLUTION OF THE CITY OF BROWNSVILLE’S COUNCIL
RECOMMENDING RESTORING RECREATIONAL IMMUNITY RIGHTS

WHEREAS, in 1995, the Legislative Assembly declared it to be the public policy of the State of Oregon to encourage landowners to make their land available to the public for recreational purposes by limiting their liability toward persons entering thereon for such purposes, and;

WHEREAS, recreation purposes includes, but are not limited to, outdoor activities such as hunting, fishing, swimming, boating, camping, cycling, picnicking, hiking, nature study, outdoor educational activities, water sports, winter sports, viewing or enjoying historical, archaeological, scenic or scientific sites or volunteering for any public purpose project, including the above aforementioned activities, as well as: gardening, woodcutting and for the harvest of special forest products, and;

WHEREAS, the Public Use of Lands Act has increased the availability of land for free recreation by citizens and visitors alike by limiting liability to cities, counties, park districts, irrigation districts, schools and private landowners, including property-owner associations, farmers and timber companies that, by virtue of this act, allow members of the public to use or traverse their lands at no charge for recreation purposes, and;

WHEREAS, for twenty years, the Public Use of Lands Act has been broadly interpreted to extend this immunity from liability to apply not only to landowners but also to the landowner’s employees agents, and volunteers, and;

WHEREAS, in Johnson v. Gibson, the Oregon Supreme Court held that when the Legislature passed the Public Use of Lands Act, it intended to immunize only the landowner, otherwise the Legislative Assembly would have included employees, agents and volunteers in the Act, and;

WHEREAS, this ruling effectively undermines a landowner’s recreational immunity from tort liability under the Act because public employers are statutorily required to represent and indemnify their employees and most, if not all, landowners who allow access to their lands free of charge will ultimately be responsible for the negligence of their employees that results in injury to a member of the public or property, and;

WHEREAS, landowners will likely face substantially increased insurance premiums for this new risk exposure and/or have to close their property or amenities to Oregonians trying to recreate due to the result of this decision, and;
WHERRAS, cities and counties in Oregon are part of an insurance pool meaning that claims brought against those entities will have a negative impact on the tax paying citizens of Oregon and make it difficult for agencies to continue recreational activities.

NOW, THEREFORE, let it be known that the Brownsville City Council supports legislation in the 2017 Oregon Legislative Assembly promulgated to restore full recreational immunity to landowners and their officers, employees, agents or volunteers who are acting within the scope of their employment or duties so as to allow Oregonians to access their lands for recreational use and enjoyment; namely S.B. 327 and H.B. 2438.

PASSED AND ADOPTED by the Council of the City of Brownsville this 28th day of February, 2017.

S. Scott McDowell
City Administrator

Don Ware
Mayor
Restore Recreational Immunity

In the July/August 2016 issue of News and Risk Management Review, we brought you information about a recent Oregon Supreme Court case (Johnson v. Gibson) that has threatened recreational immunity. Recreational immunity, derived from the Public Use of Lands Act, extends immunity from liability to landowners who make their lands available to the public free of charge. It was designed to protect landowners, both public and private, from liability should a person become injured while using the land for recreational purposes.

The Oregon Supreme Court ruled that when the Legislature passed the Public Use of Lands Act, it only immunized the actual landowner and did not extend the immunity to employees, agents, and volunteers who act on behalf of the landowners.

This ruling has a significant effect on special districts. Since public employers are statutorily required to represent and indemnify their employees, agents, and volunteers, it exposes them to an increased risk of liability. It means recreational immunity no longer exists for a district when an employee, board member, or other public official is named on a lawsuit which alleges damages resulting from a recreational activity.

Every member of SDIS provides valuable services to the people of Oregon. Our success directly affects individuals throughout the state. Together we must find a way to create a safe environment for the public while protecting the dollars that taxpayers have entrusted us with.
How Your District is Affected
All 34 types of special districts are affected. More specifically, your district is affected if it owns property that you do not charge the public to access for recreational purposes. This could include areas like parks, playgrounds, recreational facilities, irrigation district easements, public docks, gifted or undeveloped property used for hiking, biking, hunting, etc., lakes/reservoirs used for boating and swimming, and more. As a result of this ruling, your district may face substantially increased insurance premiums for this new risk exposure; thereby resulting in reduced recreational opportunities or services, limiting access, or closing property to recreational use altogether.

What SDAO is Doing
SDAO is a member of a coalition of public and private property owners who worked on a legislative proposal that has been introduced for the upcoming Legislative Session and will amend the Public Use of Lands Act.

How You Can Help
We urge your board of directors to review the sample resolution we have developed (enclosed) and consider its adoption. After the resolution has been adopted, we would simply ask that you speak with your legislators explaining the need for fixing this decision and share the adopted resolution with them. Doing so will strengthen our voice on this important issue. If you need assistance locating your legislators, please visit www.oregonlegislature.gov/findeyourlegislator/leg-districts.html.
Frequently Asked Questions

What is recreational immunity?
It is derived from the Public Use of Lands Act that was enacted by the Legislative Assembly in 1995. The driving policy behind this act was to provide more recreational opportunities to the citizens and visitors of Oregon. In order to accomplish this goal the Act extends immunity from liability to landowners, both public and private, who make their lands available to the public free of charge in the event a person is injured while using the land for recreational purposes.

What are recreational purposes?
According to the Public Use of Lands Act, recreational purposes "include, but are not limited to, outdoor activities such as hunting, fishing, swimming, boating, camping, picnicking, hiking, nature study, outdoor educational activities, water skiing, winter sports, viewing or enjoying historical, archaeological, scenic or scientific sites or volunteering for any public purpose project, gardening, woodcutting and for the harvest of special forest products."

What has been the outcome of the Act?
The Public Use of Lands Act has increased the availability of land for free recreation by limiting liability to cities, counties, parks, schools and a wide range of 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.

What types of property does this decision impact?
This decision impacts all public and private lands in Oregon that are available to the public free of charge to recreate on. This includes areas like state forests/parks, county parks, open space, playgrounds, recreational facilities, irrigation district easements, public docks, gifted or undeveloped property used for hiking, biking, hunting etc., lakes/reservoirs used for boating and swimming, as well as farms, ranches and private forest lands.

Why is a legislative fix needed?
For more than twenty years the Public Lands Use Act had been broadly interpreted. However, a 2016 Oregon Supreme Court decision, Johnson v. Gibson, undermined the immunity by ruling that when the Legislature passed the Public Lands Act it only immunized the actual landowner and did not extend the immunity to employees, agents, volunteers and the like who act on behalf of the landowners.

What has been the result of this decision?
This ruling effectively undermines a public land-owners recreational immunity from tort liability under the Act because public employers are statutorily required to represent and indemnify their employees, agents and volunteers who are acting within the course and scope of their duties. Second, it exposes private land owners to similar liability because they will likely be ultimately found responsible for their employees' negligence.

What are the consequences of not amending the Act?
As a result of this ruling both public and private landowners will likely face substantially increased insurance premiums for this new risk exposure, thereby forcing them to reduce recreational opportunities or services or to limit access or entirely close their property to recreational use.

What about the Constitutional Remedies Clause?
Article 1, section 10 of the Oregon Constitution provides that "every man shall have remedy by due course of law for injury done him in his person, property, or reputation."

Fixing recreational immunity for public and private property owners will also require modifying a landowner's duty of care toward members of the public who use land for recreational purposes. Specifically, the legislation will expressly state the landowner's duties owed to members of the public in order to satisfy the remedies clause and ensure that the immunity is not illusory.

How will the bill clarify the duties owed to the public?
The bill clarifies that a landowner does not owe a duty to inspect and maintain the land in a safe condition for entry or use by the public for recreational purposes. Therefore, the landowner does not extend any assurance that the land is safe for any purpose and does not assume responsibility or incur liability for injury, death or loss to any person or property.

Will the public still be able to sue landowners?
Yes. Landowners, both public and private, will still be liable for intentional acts.
Sample Resolution

RESOLUTION NO. ___
A RESOLUTION OF THE (Insert Name of Agency)
(Insert Governing body title, e.g. Board of Directors, City Council)
RECOMMENDING RESTORING RECREATIONAL IMMUNITY RIGHTS

WHEREAS, in 1995, the Legislative Assembly declared it to be the public policy of the State of Oregon to encourage landowners to make their land available to the public for recreational purposes by limiting their liability toward persons entering thereon for such purposes, and;

WHEREAS, recreations purposes includes, but are not limited to, outdoor activities such as hunting, fishing, swimming, boating, camping, picnicking, hiking, nature study, outdoor educational activities, water sports, winter sports, viewing or enjoying historical, archaeological, scenic or scientific sites or volunteering for any public purpose project, including the above aforementioned activities, as well as: gardening, woodcutting and for the harvest of special forest products, and;

WHEREAS, the Public Use of Lands Act has increased the availability of land for free recreation by citizens and visitors alike by limiting liability to cities, counties, park districts, irrigation districts, schools and private landowners, including property-owner associations, farmers and timber companies that, by virtue of this act, allow members of the public to use or traverse their lands at no charge for recreation purposes, and;

WHEREAS, for twenty years, the Public Use of Lands Act has been broadly interpreted to extend this immunity from liability to apply not only to landowners but also to the landowner’s employees, agents, and volunteers, and;

WHEREAS, in Johnson v. Gibson, the Oregon Supreme Court held that when the Legislature passed the Public Use of Lands Act, it intended to immunize only the landowner; otherwise the Legislative Assembly would have included employees, agents and volunteers in the Act, and;

WHEREAS, this ruling effectively undermines a landowner’s recreational immunity from tort liability under the Act because public employers are statutorily required to represent and indemnify their employees and most, if not all, landowners who allow access to their lands free of charge will ultimately be responsible for the negligence of their employees that results in injury to a member of the public or property, and;

WHEREAS, landowners will likely face substantially increased insurance premiums for this new risk exposure and/or have to close their property or amenities to Oregonians trying to recreate due to the result of this decision.

NOW, THEREFORE, let it be known that the (Insert Name of Agency) supports legislation in the 2017 Oregon Legislative Assembly promulgated to restore recreational immunity to landowners and their officers, employees, agents or volunteers who are acting within the scope of their employment or duties so to allow Oregonians to access their lands for recreational use and enjoyment.

ADOPTED by the Board of Directors of the (Insert Name of Agency) on (Insert Date).

(Insert Name), (Insert Title)

Attest:

(Insert Name), (Insert Title)

Resolution URL: http://ref.sdao.com/landuse/resolution.docx
Recreational Immunity Reform

Priority
Ensure that employees, officers and other agents of landowners, including cities, are exempt from liability under Oregon's recreational immunity law.

Background
Landowners in Oregon are immune from civil liability in the event a person is injured on their property provided that they were recreating and that the property owner did not charge a fee for access to their land. However, the Oregon Supreme Court has ruled that the employees or other agents of the landowner may be liable if a person is injured as a result of their actions. For public agencies that are required to indemnify and defend their employees against such claims, recreational immunity has been stripped away.

Without effective recreational immunity, cities will expose themselves to unwarranted risks if they expand recreational opportunities in their community. Indeed, some have been forced to close parks. Oregon's recreational opportunities are utilized to a high degree by its citizens, contribute to quality of life and should not be compromised by the possibility of such lawsuits.

Outcome
Restore the civil immunity land owners and their employees had against tort actions for injuries sustained while recreating.
Recreational Immunity: What Now?

Speakers
- Kirk Mylander, CIS General Counsel
- Scott Moss, CIS P/C Trust Director
- Jim McWilliams, CIS P/C Claims Manager

Agenda
- The Story of the Case: Kirk
- Discretionary Immunity: Kirk
- Risk Management Recommendations: Scott
- Claims Documentation & Preparation: Jim
- Q & A
Johnson vs. Gibson: The Story

**Question:**
Does recreational immunity only apply to “owners” of recreational land?

Or, does it also apply to individual employees who repair, maintain, or operate improvements on city owned recreational land?

**The Defendants:**
Scott Gibson: Maintenance employee who dug hole to fix sprinkler

Robert Stillson: Supervisor who called Gibson away from sprinkler project

- Judge denied motion to substitute City of Portland for individual employees
- But, the court did agree with City that recreational immunity applied to employees who maintain recreational land as part of their jobs – case over.
- Johnson appealed
Personal Employee Liability

- Oregon Supreme Court held that employees are no longer protected by recreational use immunity
  - Johnson can proceed with her lawsuit against the employees directly

Employees are Indemnified

- Portland must indemnify its employees
  - City is still financially responsible for the claim

CIS Has You Covered

- CIS still covers you and your city / county
- CIS expects a sharp increase in lawsuits filed against public employees who maintain or repair recreational areas
- Plaintiffs can make an end run around recreational immunity and go forward with cases that were completely blocked prior to Johnson v. Gibson
Discretionary Immunity

Oregon Tort Claims Act Provides:
Discretionary Immunity: ORS 30.265(3)(c)
"...based upon the performance of or the failure to exercise or perform a discretionary function or duty, whether or not the discretion is abused."

Discretionary Immunity

One of the more succinct formulations of the distinction between Immune and non-Immune actions under the doctrine of discretionary immunity is this:
1. Discretionary immunity applies to a choice
2. Among alternative public policies (not day to day actions)
3. By persons with the authority to make such policies decisions.

Exercise Discretion to Set Policy

Decisions at the policy level of government, such as the design, location, and installation of traffic signals, or the make up of programs such as tree and sidewalk maintenance, are typically immune from liability.

- Morris v Oregon State Transportation Comm., 38 Or App 331 (1979)
- Gallison v City of Portland, 37 Or App 135 (1978)
- Bakr v Elliott, 125 Or App 1 (1993)

Discretionary Immunity

Does NOT apply when:

- Choosing to not follow policy
- Failing to implement established maintenance/inspection program

Discretionary immunity did not apply when city was negligent in implementation of traffic sign program. (Design of program would have been covered.)

- Tozer v. City of Eugene, 115 Or App 464 (1992)
Discretionary Immunity

How to prove it applies:
1. Final decision at governing body level
2. Decision sets plan/program carried out by staff
3. Evidence that competing alternatives were investigated and considered
   - Staff Recommendations / Reports
   - Public Testimony
   - Experts or Consultants

Identification of all free facilities
Deferred Maintenance

Appoint "Owners"

Skateboard and BMX Parks
Recommended Signage
Park Hours: 6:00am to 10:00pm
Use of this facility could result in serious physical injuries up to and including paralysis and/or death. Use at your own risk.
Usage is intended for skateboarders – BMX bikes prohibited
Be responsible - this park is not supervised
Safety first - helmets and other protective gear are recommended
Be respectful of others – no fighting or foul language
Clean up after yourself – do not leave trash on or around the skate park
Report any damage or hazards discovered to the City at the number below
Closed if wet
All other City Rules apply
For emergencies call 911
To report damage call xxx-xxx-xxxx
OREGON LAW (CHAPTER 135) LIMITS THE LIABILITY OF A GOVERNMENTAL UNIT FOR DAMAGES ARISING DIRECTLY FROM THE RECREATIONAL USE OF THIS PARK.

High Risk Activities
Free Areas

**Pioneer Park**
- Baseball/Softball Diamonds.
- Soccer Fields.
- Parking Areas.
- Playground Equipment Areas.
- Swimming in the Calapooia River.
- Restrooms & Portable Toilets.
- Sidewalks & Trails.
- Picnic Areas.
- All park amenities.
- Horseshoe Pits.
- Use of bicycles, skate boards, scooters and all other like modes of transportation are done at the operator's risk and responsibility.
- Any recreational activities brought in by the public are done at the public's risk and responsibility.
- Logging Area.
- Designated Dog Park.
- Sand Volley Ball Court.
- Well Head Hills.
- Use of buildings that are not reserved also may be used by the public at the public's own risk & responsibility.
- Basketball Courts.
- Water Fountains and Spiggots.
- Open Space Areas.

**Kirk's Ferry**
- Parking Areas.
- Basketball Court Areas.
- Sidewalks.
- Picnic Areas.
- All park amenities.
- Use of bicycles, skate boards, scooters and all other like modes of transportation are done at the operator's risk and responsibility.
- Any recreational activities brought in by the public are done at the public's risk and responsibility.
- Open Space Areas.
**Blakely Park**
- Parking Areas.
- Playground Equipment Areas.
- Sidewalks.
- Picnic Areas.
- All park amenities.
- Use of bicycles, skate boards, scooters and all other like modes of transportation are done at the operator’s risk and responsibility.
- Any recreational activities brought in by the public are done at the public’s risk and responsibility.
- Open Space Areas.

**Remington Park**
- Parking Areas.
- Playground Equipment Areas.
- Sidewalks.
- Use of bicycles, skate boards, scooters and all other like modes of transportation are done at the operator’s risk and responsibility.
- Any recreational activities brought in by the public are done at the public’s risk and responsibility.
- Open Space Areas.

**Library Park**
- Parking Areas.
- Sidewalks & Menefee Trail.
- Use of bicycles, skate boards, scooters and all other like modes of transportation are done at the operator’s risk and responsibility.
- Any recreational activities brought in by the public are done at the public’s risk and responsibility.
- Open Space Areas.
- Picnic Areas.
- All park amenities.
- Use of Mill Race water is prohibited or done strictly at the risk of the public.

**Pioneer Cemetery**
- Parking Areas.
- Any recreational activities brought in by the public are done at the public’s risk and responsibility.
- Open Space Areas.
General Open Space Areas

- Any recreational activities brought in by the public are done at the public’s risk and responsibility.
- The City owns open space that is not improved for public use. Public is at its own risk in these areas.

Ownership Statement

- All land, appurtenances and amenities are owned by the City of Brownsville. All employees, including the City Administrator, are considered agents and assigns of the City.

Facility Rentals

- All facilities rented by the general public are “as-is” transactions. The City assumes no responsibility for the general public’s use of any equipment, appurtenances or otherwise within the City Park system. The party renting the facilities assumes all liability.

Facility Agreements

- All facilities rented through agreement by various civic organizations and other organizations are “as-is” transactions. The City assumes no responsibility for their use of any equipment, appurtenances, open space areas or otherwise within the City Park system. The party renting the facilities assumes all liability.

Camping Fees

- All camping fees collected include all parties staying and associated with a camp site. The City assumes no responsibility for the general public's use of any equipment, open spaces areas, appurtenances or otherwise within the City Park system. The party renting the camp site assumes all liability.
1st DUI? We Can Help You.
Who is Watching Your Back? Diversion Monitoring: 12-18 months

FindLaw Caselaw United States US 9th Cir. JOHNSON v. GIBSON

JOHNSON v. GIBSON


No. 19-92087.
Decided: April 24, 2019

Before: RAYMOND C. FISHER, RICHARD A. PAKE, and SANDRA S. IKUWA, Circuit Judges. THOMAS W. TIEFEL and CHRISTOPHER H. MOORE (argued), Landis Bennett Flansburg LLP, Portland, OR, for Plaintiff—Appellant. HARRY STRICK (argued), Chief Deputy City Attorney, Office of City Attorney, Portland, OR, for Defendants—Appellees.

ORDER CERTIFYING QUESTIONS TO THE OREGON SUPREME COURT

ORDER

Pursuant to the parties' joint motion, we certify two questions to the Oregon Supreme Court. Plaintiff Emily Johnson filed this state-law negligence action against Scott Gibson and Robert Stillson, two park maintenance employees of the City of Portland, after she fell and was injured while jogging in the Tom McCall Waterfront Park. This appeal raises two questions that may be determinative of Johnson's cause of action: (1) whether city maintenance workers are "employees" of the park and hence entitled to immunity under the Oregon Public Use of Lands Act, ORS 650.645 to 650.700; and (2), if so, whether the Public Use of Lands Act violates the remedies clause, Art. 1, Section 10, of the Oregon Constitution. Because it appears to this court that there is no controlling precedent on these questions in the decisions of the Oregon Supreme Court and the Oregon Court of Appeals, we respectfully certify them to the Oregon Supreme Court.

I. FACTUAL AND PROCEDURAL HISTORY

The following facts are undisputed. See W. Helicopter Servs., Inc. v. Riggenbaum Aircraft Corp., 341 Or. 354, 354-64, 160 P.3d 469, 470 (2007). Waterfront Park is owned by the City of Portland and maintained through the City's Parks and Recreation Bureau. It is generally open to the public for recreational use.

At all relevant times, defendant Scott Gibson was an employee of the City, employed as a park technician for the Parks and Recreation Bureau. As part of his duties, Gibson regulated and performed maintenance in City parks, including Waterfront Park. Waterfront Park was Gibson's primary responsibility. On July 12, 2009, while working at Waterfront Park, Gibson noticed a broken sprinkler head located near the Benson Springs Fountain. To diagnose the problem with the sprinkler, Gibson dug a hole approximately a foot deep and 18 inches wide. After determining that the sprinkler head would have to be replaced with a part he did not have in stock at the location, Gibson placed a single cone on top of the sprinkler head to serve as a warning and left the site. At the time, Gibson expected to have a replacement part the next day, but he did not do so. Gibson would have used a more permanent barricade to mark the hole if he had anticipated the delay in completing the repair.

At all relevant times, defendant Robert Stillson was an employee of the City working as a maintenance supervisor with the Parks and Recreation Bureau. As part of his duties, Stillson supervised a crew of park maintenance workers, including Gibson. Stillson testified that workers had three means for securing a temporary hole—a cone, a piece of plywood to cover the hole and a barricade, such as a snowshoe. He testified that the hole created by Gibson should have been marked at least by a cone. Stillson provided his employees no formal training about how best to mark a hazard like the one Gibson created on July 12.

In the middle of the day on July 14, 2009, plaintiff Emily Johnson was jogging in Waterfront Park when she stepped into the hole that Gibson had created and fell. The hole was not marked, by a cone or otherwise, at the time of Johnson's accident. Johnson alleges she suffered a severe and permanent disabling injury from the fall.


In April 2012, the defendants moved for summary judgment under Rule 56 of the Federal Rules of Civil Procedure. They argued they were immune from liability for Johnson's state negligence claim under the Public Use of Lands Act, 15 ORS 971 to 977. The Act provides immunity from negligence liability to an "owner" that makes its land available to the public for recreational use.

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, woodcutting or the harvest of special forest products when the owner of either directly or indirectly permits any person to use the land for recreational purposes, woodcutting or the harvest of special forest products.

15 ORS 976(4) (2009). It further defines an "owner" as "the possessor of any interest in any land, including but not limited to possession of a free title. "Owner" includes a tenant, lessee, occupant or other person in possession of the land." 15 ORS 976(6) (2009).

The defendants argued they were "owners" of Waterfront Park for purposes of the Public Use of Lands Act because they were "responsible for the maintenance, repair and operation of Waterfront Park." In making this argument, they relied on two decisions by the Oregon Court of Appeals.

In the first of these decisions, Dunton v. L.W. Vall Co., 23 Or.App. 280, 282, 541 P.2d 311 (1975), the plaintiff was injured on land owned by the federal Bureau of Land Management (BLM) when he rode his motorcycle into a barbed wire fence attached across a new section of highway that was under construction. See id. at 281, 541 P.2d at 312. The plaintiff brought a negligence action against the state Department of Transportation, the L. W. Vall Co. (the construction contractor), and the Peters and Wood Company (the subcontractor doing the grading work). Alleging they were negligent in placing strands of barbed wire across the road knowing that it was used by vehicles in traffic and without posting warnings. See id. at 282, 541 P.2d at 312. The court held that the defendant contractors were "persons in possession of the land," and hence were immune under the Public Use of Lands Act. Id. at 281, 541 P.2d at 312.

In the second of these decisions, Brewer v. Oregon Dept. of Fish & Wildlife, 167 Or.App. 279, 2 P.3d 418 (2000), a mother and daughter died when swimming in a creek below a fish migration dam owned and maintained by the state of Oregon. See id. at 283, 2 P.3d at 419. The plaintiff filed a wrongful death action against numerous state agencies and the Confederated Tribes of Warm Springs, alleging that the defendants were negligent because the dam was built in such a manner that it created a dangerous undertow. See id. at 285, 2 P.3d at 420. Relying on Dunton, the court held that two of the defendants—the Oregon Department of Fish and Wildlife (ODFW) and the Confederated Tribes of Warm Springs—were "owners," and hence entitled to immunity, under the Public Use of Lands Act because they maintained and operated the dam.

In Dunton, we found that those who were constructing improvements on land were "owners" within the meaning of the definition found in the Act. If those who merely construct improvements on land qualify as owners, certainly those who maintain and operate improvements on land also fall within the scope of that definition. The trial court correctly concluded that ODFW and the Confederated Tribes were within the ambit of the Act for purposes of immunity.

Id. at 281, 2 P.3d at 412.

The defendants here contend that Dunton and especially Brewer were controlling on the issue of immunity. They argued they were entitled to immunity because, "[t]he Brewer makes clear, those who maintain and operate improvements on the land fall within the definition of 'owners' for purposes of the Public Use of Lands Act."

The defendants also maintained that granting them immunity under the Public Use of Lands Act would not violate the reasonable scope of the Oregon Constitution. That statute states that "every man shall have remedy by due course of law, for injury done him in his person, property, or reputation," Or. Const. art. 1, § 10, and is designed to preserve common law rights of action that existed when the Oregon Constitution was adopted in 1857. See Howell v. Boga, 295 Or. 260, 269-70, 368 P.2d 6, 7 (1962).

The defendants' primary defense was once again relied on Brewer. After reviewing Oregon case law, Brewer concluded that the state legislature could abolish a common law right of action that existed in 1857 as long as the legislative enactment provided a countervailing benefit to those deprived of their common law cause of action. The court explained that the Oregon Supreme Court's case law appears to recognize the legislature's ability to strike some sort of balance between compelling interests by redefining rights, including rights of action, even where such a reallocation affects or abridges a remedy under some circumstances. The key would appear to be that there indeed had to be some sort of "balancing," or legitimate trade-off, involved.

Brewer, 167 Or.App. at 289-90, 2 P.3d at 408. The court held that the Public Use of Lands Act represented a permissible exercise of legislative authority under this franchise/benefit calculus.

The trade-off represented by this policy is manifest. The owner of land opened for recreational use in accordance with the Act gives up exclusive enjoyment of the land end, in return, is insulated from certain types of liability for injuries that may occur there. The uses of recreational lands opened in accordance with the Act give up their right to sue land owners for certain types of injuries but gain the benefit of using land for recreation that otherwise would not be available to them.

Id. at 290-91, 2 P.3d at 408. The court held that the Act "struck an acceptable balance, by conferring certain benefits and certain detriments on both the landowners involved, and on the recreational users of that land," and therefore "does not violate Article I, section 10, of the Oregon Constitution." Id. at 290-91, 2 P.3d at 408.
In appealing summary judgment, Johnson contested both prongs of the defendants' arguments. First, she disputed the defendants' contention that they were "owners" under the Public Use of Lands Act. She maintained that the City of Portland was the sole owner of Waterfront Park. She argued that Dustin and Brewer were distinguishable because they involved entity defendants rather than individuals, and because the defendants in Dustin and Brewer exercised greater control over the premises than Stilson and Gibson did here. And she argued that treating Stilson and Gibson as "owners" of the park was contrary to the plain meaning of the statute.

Second, Johnson argued that, if the defendants were entitled to immunity under the Public Use of Lands Act, then the law, as applied to this case, would violate the remedy clause. She acknowledged Brewer's holding, but argued that Brewer was abrogated by the Oregon Supreme Court's subsequent decision in Stilson v. Graham Transfer, Inc., 332 Or. 83, 5 P.3d 323 (2000). Stilson "engaged in a wholesale reexamination [of the court's remedy clause] independence...and established a new method of analysis of claims arising under it." Norell, 325 Or. at 355, 921 P.2d at 6. Under this new method of analysis:

In analyzing a claim under the remedy clause, the first question is whether the plaintiff has alleged an injury to one of the absolute rights that Article I, section 10 protects. Stated differently, when does the state's right to the Oregon Constitution in 1857, did the common law of Oregon recognize a cause of action for the alleged injury? If the answer to that question is yes, and if the legislature has abolished the common-law cause of action for injury to rights that are protected by the remedy clause, then the second question is whether it has provided a constitutionally adequate substitute remedy for the common-law cause of action for that injury.

Stilson, 325 Or. at 124, 5 P.3d at 356-57. Stilson also expressly rejected Brewer's understanding that the legislature could altogether abolish a cause of action that existed at common law without providing a substitute remedy. "[H]aving merg[ed] the court's holdings "that the legislature can abolish or alter absolute rights respecting persons, property, or reputation that existed when the Oregon Constitution was adopted without violating the remedy clause." Id. at 219, 921 P.2d at 323.

The district court rejected Johnson's contentions, found the defendants' arguments persuasive, and granted the defendants' motion for summary judgment. See Johnson v. Gibson, 996 F.Supp.2d 1795 (D.Or.2013). It first held that Stilson and Gibson were "owners" for purposes of the Public Use of Lands Act because they were responsible for the maintenance and/or repair of the sprinkler system in the Park. "Id. at 2089. In the district court's view, this placed the defendants "in the same position as Stilson/hauser, who maintained and operated the dam" in Brewer. Id.

The court also agreed with the defendants that granting them immunity under the Public Use of Lands Act would not violate the remedy clause of the Oregon Constitution. "Id. at 2086-88. The court concluded that Brewer was directly on point and, significantly, that Brewer remained good law. With respect to the latter holding, the court recognized that Brewer and Stilson were in some tension. It also recognized that the Oregon Court of Appeals, in Schlesinger v. City of Portland, 850 Or.App. 279, 600 N.E.2d 476 (1993), had called Brewer's continuing validity into question. See Johnson, 996 F.Supp.2d at 2086-87.

The court concluded, however, that Brewer retained its precedential value because the Oregon Supreme Court had not specifically overruled Brewer in subsequent decisions and had denied review in Brewer itself, even after Stilson was decided. 'The court reasoned:

Had the Supreme Court been concerned about the ultimate rulings in Brewer, including the "benefit/benefit" calculus applied to Stilson/hauser, it surely could have addressed those rulings in Stilson or Storm v. McClung, 234 Or. 205, 47 P.2d 496 (1936) or by granting review in the appeal of Brewer. The fact that the Oregon Supreme Court has not overruled Brewer "is significant because the [court] did not specifically disavow Brewer's rationale in its decisions after Stilson."" Id. at 2089. In the district court's view, this placed the defendants "in the same position as Stilson/hauser, who maintained and operated the dam" in Brewer. Id.

Id. at 2088.

Johnson timely appealed the adverse judgment, and in January 2014, the parties filed a joint motion to certify two questions to the Oregon Supreme Court:

1. Whether individual employees responsible for maintaining, operating and improving land made available to the public for recreational purposes can properly be considered an "owner" of land, as that term is defined in the Oregon Public Use of Lands Act, Oregon Revised Statutes §225.670 to 225.696, and therefore immune from actions against them for their own negligence?

2. If employees can be considered to be "owners" under the Public Use of Lands Act, does the Act, as applied to Brewer, violate the Remedy Clause of the Oregon Constitution, Article I, section 10?

The parties argue that "[t]his case raises important questions of Oregon statutory and constitutional law that are unresolved by previous decisions of the Supreme Court or intermediate appellate courts of Oregon" and "determinatives of the case before this Court." They asserted that "[t]his case raises issues that look beyond the issues left unresolved in Schlesinger, namely whether the Oregon Court of Appeals was correct in its holdings in Brewer, that the Recreational Use of Lands Statute insulates those who maintain the land on behalf of the owner, and that the Oregon Constitution permits it to do so."

1. Grounds for Certification

Under Oregon law:
The Supreme Court may answer questions of law certified to it by the Supreme Court of the United States, a Court of Appeals of the United States, a United States District Court, a panel of the Bankruptcy Appellate Panel, or the highest appellate court of any other state, when requested by the certifying court if the questions are involved in any proceeding before it. A question of law may be determined by the certifying court in the certifying court proceeding and is determined by the certifying court in the certifying court proceeding and is determined by the certifying court in the certifying court proceeding.

ORS 18.920. See W. Helicopter Servs., 321 Or. at 364, 811 P.2d at 630; Fields v. Legacy Health Sys., 413 F.3d 945, 970 (9th Cir.2005). We conclude that this standard is met here.

First, we are aware of no controlling precedent addressing whether an individual employee responsible for repairing, maintaining and operating improvements on City-owned recreational land made available to the public for recreational purposes may properly be considered an “owner” of land as that term is defined in the Oregon Public Use of Lands Act. Brewer held that those who maintain and operate improvements on land fall within the scope of the statutory definition of owner. 167 Or.App. at 267, 9 P.3d 412. The defendants here, however, may not be comparable to the Swaldammer Tribal Improvement Rutgers. They are individual city employees, not an entity, and they may not exercise the same degree of control over the park that Swaldammer exercised over the dam. Under Oregon law, moreover, “there is no more persuasive evidence of the intent of the legislature than the words by which the legislature undertook to give expression to its wishes.” State v. Galvin, 549 Or. 159, 330, 293 P.3d 1245, 1260 (2012) (internal quotation marks omitted). Thus, the first step in interpreting a statute is “an examination of text and context.” Id. Here, neither the Oregon Supreme Court nor the Oregon Court of Appeals has carefully examined the operative words of ORS 105.670 (a) (“owner”, “occupant” and “person in possession”) or applied them to a city maintenance worker.

Second, we believe there is no controlling precedent addressing whether the Public Use of Lands Act violates the remedy clauses of the Oregon Constitution as applied to the owners of public land. Although Brewer is on point, neither the Oregon Supreme Court nor the Oregon Court of Appeals has yet addressed whether Brewer has been abrogated by Swaldammer. Helicopter Servs. called Brewer into question, but held that Brewer was still applicable. See 1010 Friends of Or. v. Bd. of Cnty. Comm’rs., 261 Or. 41, 456 P.2d 1371, 1373 (1969) (acknowledging that denial of review by the Oregon Supreme Court “may not be taken as expressing even a slight hint that this court approves the decision of the Court of Appeals”); accord In re Marriage of Roll, 349 Or. 289, 294, 243 P.3d 1187, 1189 (2010) (“[t]he denial of review carries no implication that the decision of the Court of Appeals was correct.” (quoting 2000 Friends of Oregon, 264 Or. at 44, 494 P.2d at 1370)). Another Oregon Court of Appeals decision applied Brewer, but was later reversed on other grounds, and thus does not constitute controlling precedent on the continuing validity of Brewer. See Liberty v. State, Dep’t of Emp’t & Training, 200 Or.App. 662, 669–70, 250 P.3d 906, 910, opinion deferred on reconsideration, 200 Or.App. 355, 356, 356 P.3d 125 (2010), rev’d, 342 Or. 11, 168 P.3d 909 (2007). Accordingly, certification is appropriate to determine whether Brewer remains good law and, if so, whether the Public Use of Lands Act violates the remedy clauses of the Oregon Constitution as applied to Johnson’s claim.

III. Questions Certified

We respectfully certify the following questions to the Oregon Supreme Court:

1. Whether an individual employee responsible for repairing, maintaining and operating improvements on City-owned recreational land made available to the public for recreational purposes are “owners” of land, as that term is defined in the Oregon Public Use of Lands Act, ORS 105.670 to 105.700, and therefore immune from liability for their negligence.

a. If each employee is an “owner” under the Public Use of Lands Act, whether the Act, as applied to them, violates the remedy clause of the Oregon Constitution, Article V, section 10?

We respectfully ask the Oregon Supreme Court to exercise its discretionary authority to accept and decide these questions. Our phrasing of the questions should not restrict the court’s consideration of the issues involved. The court may reformulate the relevant state law questions as it perceives them to be, in light of the contents of the parties. See Howell v. Rogers, 679 P.2d 1054, 1058 (Or.1984); W. Helicopter Servs., 321 Or. at 370–71, 811 P.2d at 633–34. We agree to abide by the decision of the Oregon Supreme Court. If the court decides that the questions presented are inappropriate for certification, or if it denies the certification for any other reason, we request that it so state, and we will resolve the question according to our best understanding of Oregon law.

The Clerk of this court shall file a certified copy of this order with the Oregon Supreme Court under ORS 18.922. This appeal is withdrawn from submission and will be submitted following receipt of the Oregon Supreme Court’s opinion on the certified questions or notification that it declines to answer the certified questions. The parties shall file a jurisdictional report or further proceedings in this court. The parties shall notify the Clerk of this court within one week after the Oregon Supreme Court accepts or rejects certification. To the extent the Oregon Supreme Court grants certification, the parties shall notify the Clerk within one week after the court renders its opinion.

CERTIFICATION REQUESTED: SUBMISSION VACATED.

RICHARD A. PACE, United States Circuit Judge, Presiding.
IN THE SUPREME COURT OF THE
STATE OF OREGON

Emily JOHNSON,
Plaintiff,
v.
Scott GIBSON
and Robert Stillson,
Defendants.
(US Court of Appeals Ninth Circuit 1335087;
SC S063188)

On certified questions from the United States Court of
Appeals for the Ninth Circuit; certification order dated April
24, 2015; certification accepted June 4, 2015.

Argued and submitted November 13, 2015.

Thane W. Tienson, Landye Bennett Blumstein LLP,
Portland, argued the cause and filed the brief for plaintiff. With
him on the brief was Christine N. Moore.

Harry Auerbach, Chief Deputy City Attorney, Portland,
argued the cause and filed the brief for defendants. With him
on the brief was Denis M. Vannier, Deputy City Attorney.

Kathryn H. Clarke, Portland, argued the cause and filed
the brief for amici curiae Oregon Trial Lawyers Association.
With her on the brief was Shenoa L. Payne, Haglund Kelley
LLP, Portland.

Thomas W. McPherson, Mersereau Shannon, LLP,
Portland, filed the brief for amici curiae League of Oregon
Cities, Association of Oregon Counties, CityCounty Insurance
Services, Oregon School Boards Association, Special
Districts Association of Oregon, and The International
Municipal Lawyers Association.

Janet M. Schroer, Hart Wagner LLP, Portland, filed
the brief for amicus curiae Oregon Association of Defense
Counsel.
Before Balmer, Chief Justice, and Kistler, Walters, Landau, Baldwin, Brewer and Nakamoto, Justices.*

WALTERS, J.

The certified questions are answered.

* Linder, J., retired December 31, 2015, and did not participate in the decision of this case.
WALTERS, J.

This case is before the court on two certified questions from the United States Court of Appeals for the Ninth Circuit. See ORS 28.200 - 28.255 (providing for certification of certain questions of Oregon law from specified federal courts and appellate courts of other states to Oregon Supreme Court). As framed by the Ninth Circuit, the questions are (1) whether individual employees responsible for repairing, maintaining, and operating improvements on City-owned recreational land made available to the public for recreational purposes are "owner[s]" of the land, as that term is defined in the Oregon Public Use of Lands Act, ORS 105.672 to 105.700, and therefore immune from liability for their negligence; and (2) if such employees are "owner[s]" under the Act, whether the Act, as applied to them, violates the remedy clause of Article I, section 10, of the Oregon Constitution. We conclude that the individual employees in this case do not qualify as "owner[s]" under the Act, and that we need not address the second certified question.

This case arose when plaintiff, who is legally blind, was injured when she stepped into a hole while jogging in a public park in the City of Portland (the City). Plaintiff filed a complaint against the City and defendants Gibson and Stillson. Defendant Gibson had created the hole to fix a malfunctioning sprinkler head; he was a park technician with primary responsibility for maintenance of the park. Defendant Stillson was the maintenance supervisor for all westside parks in the City.

1 ORS 105.672(4), which defines "owner" for purposes of the Act, was amended in 2004, and those changes went into effect January 1, 2010. Or. Laws 2004, ch 532, § 1. Plaintiff alleges that her injuries occurred in July 2009. We therefore assume, as do the parties, that the Ninth Circuit's questions refer to the version of the statute in place at the time plaintiff's injuries occurred. That statute is ORS 105.672(4) (2007).

The current version of ORS 105.672(4) provides: "Owner" means the possessor of any interest in any land, such as the holder of a fee 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."

2 The remedy clause provides: "[E]very man shall have remedy by due course of law for injury done him in his person, property, or reputation." Or Const, Art 1, § 10.
Plaintiff filed her complaint in federal district court, invoking federal claim and supplemental jurisdiction. Plaintiff alleged, under federal law, that the City had violated Title II of the American's with Disabilities Act (ADA), 42 USC sections 12131 to 12165, and, under state law, that all three defendants were liable for negligently causing her injuries. The City filed two motions: A motion to substitute itself as the sole defendant, pursuant to the Oregon Tort Claims Act (OTCA), ORS 30.260 to 30.302; and a motion for summary judgment.

The district court denied the City's motion for substitution. Johnson v. City of Portland, CV No 10-117-JO (D Or Feb 10, 2010) ("Johnson I"). The court reasoned that substitution of the City would violate the remedy clause in Article I, section 10, of the Oregon Constitution, because the City was immune from liability under the Public Use of Lands Act. Had the court substituted the City as the sole defendant in the case, the only defendant would have been immune and entitled to dismissal, leaving plaintiff without a remedy for her injury. Id.

The district court granted the City's motion for summary judgment, in part. The court granted the City summary judgment as to plaintiff's federal ADA claim, leaving plaintiff's negligence claim as her only remaining claim. The district court declined to retain supplemental jurisdiction over that state law claim and dismissed the case. Id.

Plaintiff then filed a new complaint in federal court invoking diversity jurisdiction. Plaintiff again alleged a state law negligence claim against defendants Gibson and Stillson, and those defendants again filed a motion to substitute the City as the sole defendant under the OTCA. In Johnson II, the district court agreed with the prior ruling in Johnson I that substitution of the City was not appropriate. Johnson v. Gibson, 918 F Supp 2d 1075, 1082 (D Or 2013). Then, the individual defendants filed a motion for summary judgment, contending that they were immune from liability under the Public Use of Lands Act. Id. at 1083. The district court agreed, reasoning that employees who maintain land qualify as "owner[s]" under that Act, and that defendants Gibson and Stillson were therefore immune from liability.
Id. at 1085. The court also held that the Public Use of Lands Act does not violate the remedy clause. Id. at 1088. The court granted defendants’ motion for summary judgment. Id. at 1089. Plaintiff appealed to the United States Court of Appeals for the Ninth Circuit, and the Ninth Circuit certified to this court the two questions now before us.

We begin with the first question posed and the text of the Oregon Public Use of Lands Act, which provides, in part:

"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 *** when the owner of land either directly or indirectly permits any person to use the land for recreational purposes ***. The limitation on liability provided by this section applies if the principal purpose for entry upon the land is for recreational purposes ***.*"

ORS 105.682(1). "Land" is defined as "all real property, whether publicly or privately owned." ORS 105.672(3). "Owner" is defined as follows:

"'Owner' means the possessor of any interest in any land, including but not limited to possession of a fee title. 'Owner' includes a tenant, lessee, occupant or other person in possession of the land." ORS 105.672(4) (2007).

From that definition of "owner," defendants make a three-step argument: First, that the definition of the term "owner" is ambiguous and is not limited to those with a legal interest in the land; second, that, considered in its proper context, the term includes owners' employees and agents; and third, that as City employees, defendants are entitled to recreational immunity.

Defendants' argument focuses on the second sentence of the definition of "owner." Defendants recognize that they do not qualify as "owner[s]" under the first sentence of that definition because they do not have legal title to, or a legal right in, the property where plaintiff was injured. However, they contend, the second sentence in the definition
is broader, and it includes both persons who have a legal right in property—specifically, “tenant[s]” and “lessee[s]”—and those who do not—specifically, “occupant[s]” and those who are “in possession of the land.” Id. According to defendants, the dictionary definitions of those latter terms demonstrate that “owner[s]” include persons without legal or equitable title to, or interest in, land.

A “possessor” is “one that possesses: one that occupies, holds, owns, or controls.” Webster’s Third New Int’l Dictionary 1770 (unabridged ed 2002). A “possessor” is also “one that holds property without title—called also naked possessor; contrasted with owner.” Id. (emphasis in original). “Possession” means “the act or condition of having in or taking into one’s control or holding at one’s disposal”; “actual physical control or occupancy of property by one who holds for himself and not as a servant of another without regard to his ownership and who has legal rights to assert interests in the property”; “something owned, occupied, or controlled.” Id. “Occupy” means “to hold possession of”; “to reside in as an owner or tenant.” Id. at 1561. An “occupant” is “one who takes the first possession of something that has no owner”; “one who occupies a particular place or premises”; and “one who has the actual use or possession of something.” Id. 1560.

Like defendants, we surmise, from those definitions, that the terms “occupant” and “person in possession of the land” may include persons without legal or equitable title to, or interest in, the land. But that is not the only lesson we take from those definitions. Like plaintiff, we conclude that those terms describe persons who do more than take up space on the land. Under those definitions, an “occupant,” or a “person in possession of the land” must have some control over the space, and, given the context in which those terms are used, it is likely that the control that the legislature intended is the ability to decide who may use the space or what use may be made of it. The terms “occupant” and “person in possession of the land” are used in the same sentence as the terms “tenant” and “lessee.” ORS 105.672(4) (2007). Tenants and lessees have the ability to decide who may use the space that they control and for what purposes. Under noscitur a sociis, a maxim of statutory construction that
tells us that the meaning of an unclear word may be clarified by the meaning of other words used in the same context, it is likely that the legislature intended that "occupant[s]" and "person[s] in possession of the land" have the same type of control as tenants and lessees. See State v. McCullough, 347 Or 350, 361, 220 P3d 1182 (2009) (so describing noscitur a sociis). Under that interpretation, only persons with authority to control and exclude from the land qualify as "owner[s]" of the land.

Further support for that interpretation is found in the context in which the term "owner" is used in the Act. The Legislative Assembly enacted the Public Use of Lands Act in 1971 "to encourage owners of land to make their land available to the public for recreational purposes by limiting their liability toward persons entering thereon for such purposes." Or Laws 1971, ch 780, § 2, codified as former ORS 105.660 (1971), now codified as amended as ORS 105.676 (emphasis added). The immunities provided by the Act apply only if "[t]he owner makes no charge for permission to use the land." Former ORS 105.688(2)(a) (2007), renumbered as ORS 105.688(3) (2010) (emphasis added). An individual without a right to exclude others from the land or to otherwise control use of the land does not have the decision-making authority that the statute contemplates—the authority to make the land available to the public or to charge for permission to use the land.

Defendants do not point us to any statutory context or legislative history that indicates that the legislature understood the terms "occupant" or "person in possession of the land" in ORS 105.672(4) (2007) to support the unbounded meaning that defendants ascribe to those terms. In fact, a case that defendants cite for a different proposition supports

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1 Defendants do argue that the main sponsor of the bill that led to the current version of the Act stated that it was "designed to be very broad" and to "guarantee (landowners) that they [would not be] paying out of pocket for *** allowing their property to be used." Tape Recording, House Committee on Natural Resources, Subcommittee on Agriculture and Forestry, H3 2296, Jan 30, 1995, Tape 4, Side A (statement of Rep Kevin Mannix). However, we do not find that general statement of purpose to be of assistance in determining the meaning of defined terms in the statutes. See State v. Gaines, 346 Or 360, 371, 208 P3d 1042 (2009) ("It is not the intent of the individual legislators that governs, but the intent of the legislature as formally enacted into law.")
plaintiff's narrow interpretation of those terms. In *Elliott v. Rogers Construction*, 257 Or 421, 433, 479 P2d 753 (1971), the court considered the standard of care that applied to a contractor that was building a road for its principal. In discussing that issue, the court observed that "[c]ases from other jurisdictions and legal writers do not treat a contractor as an occupier of land." *Id.* at 432. In that case, the court was not interpreting the definition of "owner" in the Public Use of Lands Act, but its observation about the legal meaning of the word "occupant" is consistent with our interpretation of that word as being limited to individuals with a right to control and exclude from the land.

In this case, defendants do not argue that they had a right to exclude others from the land or to otherwise control the use of the land. Rather, they argue that the definition of "owner" is so ambiguous that it requires us to look beyond the words of the definition to the context surrounding ORS 105.682, particularly the pre-existing common law. See *Fresk v. Krueger*, 337 Or 513, 520-21, 99 P3d 282 (2004) (context includes pre-existing common law). Defendants contend that an examination of that pre-existing common law shows that the legislature must have intended "owner" to include persons who are employed by, or are agents of, persons who are more classically denominated as owners.

Defendants argue that where land and property are concerned, the common law rule has long been that employees and agents have the same privileges and immunities as their principals. Defendants contend that, insofar as the legislature enacted and amended the Act in the context of that common law rule, it intended that that rule apply. Consequently, defendants assert, the legislature was not required to say explicitly what the common law already provides.

For the common law rule on which they rely, defendants point to two Oregon cases—*Herzog v. Mittleman*, 155 Or 624, 632, 65 P2d 384 (1937); and *Elliott*, 257 Or at 432-33. In the first of those cases, *Herzog*, the court examined a guest passenger statute that provided that a guest in a vehicle would have no cause of action against the owner or operator for damages unless the accident was "intentional on the
part of [the] owner or operator or caused by his gross negligence or intoxication or his reckless disregard of the rights of others." \textit{Id.} at 628. The question presented was whether a vehicle owner's guest, who was operating the vehicle in question at the owner's invitation, would be protected by the same rule on the theory that he was acting as the owner's agent while driving the vehicle. The court looked to the \textit{Restatement (First) of Agency} (1933) for assistance and began with section 343, which provides:

"An agent who does an act otherwise a tort is not relieved from liability by the fact that he acted at the command of the principal or on account of the principal, except where he is exercising a privilege of the principal, or a privilege held by him for the protection of the principal's interest."

\textit{Id.} at 631 (internal quotation marks omitted). The court also looked to section 347 of the \textit{Restatement}, which provides: "An agent who is acting in pursuance of his authority has such immunities of the principal as are not personal to the principal." \textit{Id.} (internal quotation marks omitted). Finally, the court quoted comment a to that section:

"a. Persons may have a personal immunity from liability with respect to all persons and for all acts, as in the case of a sovereign, or for some acts, as in the case of an insane person, or as to some persons as in the case of a husband to a wife. *** Unlike certain privileges such immunities cannot be delegated. On the other hand where an immunity exists in order to more adequately protect the interests of a person in relation to his property, the agent may have the principal's immunity. Thus, the servant of a landowner while acting in the scope of his employment is under no greater duties to unseen trespassers than is the landowner[.]"

\textit{Id.} at 631-32 (internal quotation marks omitted) (omission in original).

Reasoning from those provisions, the court explained that although "it is well settled that an agent who violates a duty which he owes to a third person is answerable for the consequences thereof," if the agent is "acting within the authority, and pursuant to the direction of the principal, the agent is entitled to the same immunities as the principal would be had the principal done the same act
under the same circumstances and such immunities were not personal to the principal.” Id. at 632. Applying that legal authority to the facts at hand, the court concluded that the standard of care set out in the statute was not personal to the principal—the car owner—but that it also extended to the agent—a guest that the owner had authorized to drive the car. Id. at 633. The court further concluded that the plaintiff could not recover from the defendant-agent without a showing that the defendant-agent was grossly negligent. Id.

In the second of the Oregon cases that defendants cite, Elliott, the court considered whether a contractor working on a landowner’s property had the same limited duty of care to trespassers and licensees as did the landowner. 257 Or at 431-33. In that case, an employee of a construction company that was building a road for the State Highway Department accidentally injured a pedestrian who was crossing a portion of the road that had not yet been opened to the public. Id. at 424. The court explained that, “[b]eing ‘clothed with the rights of the owner,’ [the construction company] was only under a duty to the plaintiff’s decedent to abstain from inflicting injury willfully or by active negligence.” Id. at 433. Because the plaintiff had alleged that the company’s employee had acted with wanton misconduct, however, the court held that the lawsuit could proceed. Id. at 434-35. Thus, without discussing the issues in the same terms used in the Restatement (First) of Agency, the court implicitly concluded that the standard of care applicable to the landowner was not personal to the landowner, but that it also extended to the landowner’s agent.

In this case, defendants’ reliance on Herzog and Elliott is misplaced. Defendants draw general conclusions from the results in those cases without recognizing the distinction that is explicit in Herzog and implicit in Elliott—that is, the distinction between immunities that are personal to the principal and those that may extend to a principal’s agent. Immunities provided to a principal may, but do not always, extend to the principal’s agents. That is clear not only from the comment to the Restatement quoted above, but also from a line of Oregon cases to which plaintiff calls our
attention. In those cases, this court considered whether the sovereign immunity of governmental landowners precluding their liability for defective conditions on their streets extends to agents responsible for the repair of those streets. The first case in which the court contemplated that issue was Mattson v. Astoria, 39 Or 577, 65 P 1066 (1901).

In Mattson, the plaintiff was injured as a result of the city’s failure to keep a public street in repair and suitable for travel. Id. at 578. The plaintiff challenged a clause of the city charter that exempted the city and members of its council from liability for such failure. Id. The court said the following:

“That it is within the power of a legislature to exempt a city from liability to persons receiving injuries on account of streets being defective or out of repair, is unquestioned. *** But in such case the injured party is not wholly without remedy. He may proceed personally against the officers to whom the charter delegates the duty of keeping the streets in repair, and from whose negligence the injury resulted.”

Id. at 579. Since Mattson, the court has consistently recognized that the liability of a local government as landowner is distinct from the liability of employees and agents of the government. For instance, in Gearin v. Marion County, 110 Or 390, 396-97, 223 P 929 (1924), the court explained:

“The constitutional guaranty that ‘every man shall have remedy by due course of law for injury done him in his person, property or reputation’ we think is self-executing and operates without the aid of any legislative act or provision. *** It has, however, no application to an action sounding in tort when brought against the state or one of the counties of the state. In strict law neither the state nor a county is capable of committing a tort or lawfully authorizing one to be committed. Counties, as well as the state, act through their public officials and duly authorized agents. The officers, agents, servants and employees of the state or a county, while in the discharge of their duties, can and sometimes do commit torts, but no lawful authorization or legal justification can be found for the commission of a tort by any such officer, agent, servant or employee. When a tort is thus committed, the person committing it is personally liable for the injury resulting therefrom. The
wrongful act, however, is the act of the wrongdoer and not the act of the state or county in whose service the wrongdoer is then engaged. For the damages occasioned by the wrong thus committed it is within the power of the legislature to impute liability against the state or the county in whose service the wrongdoer is then engaged, or to exempt the state or county from such liability, but in either event the wrongdoer is himself personally responsible. It is the remedy against the wrongdoer himself and not the remedy which may or may not be imposed by statute against the state or county for the torts of its officers or agents to which the constitutional guarant[y] applies."

See also Rankin v. Buckman, et al., 9 Or 253, 259-63 (1881) (city employees liable even when city is not).

From those cases, it appears that whether a principal’s immunity is personal to the principal or may extend to an agent is a matter of legislative choice subject to constitutional bounds. We presume that the legislature was aware of that existing law. Blachana, LLC v. Bureau of Labor and Industries, 354 Or 676, 691, 318 P3d 735 (2014). In addition, the Restatement (Second) of Agency section 347(1) (1958), which had been published by the American Law Institute when the Legislative Assembly enacted the Oregon Public Use of Lands Act in 1971, is in accord. It provides that “[a]n agent does not have the immunities of his principal although acting at the direction of the principal.” Id. Restatement section 347 comment a clarifies: “Immunities exist because of an overriding public policy which serves to protect an admitted wrongdoer from civil liability. They are strictly personal to the individual and cannot be shared.” Subject to constitutional limitations, the legislature must determine as a matter of public policy how broadly to extend immunities.

Consequently, we conclude that when the Legislative Assembly enacted the Public Use of Lands Act, legislators would not necessarily have assumed that granting immunity to landowners would also grant immunity to their employees and agents. The legal principles that the court had previously applied, as well as the common law rules reflected in the restatements, recognized that the grant of immunity to a principal, particularly to a governmental principal, would not necessarily extend to the employees and agents of the
principal. Whether a court would imply such an extension could depend, for instance, on whether the court considered the grant of immunity personal to the principal, or whether extension of immunity to an agent would eliminate a remedy that the Oregon Constitution requires.

In this case, in deciding whether to imply an extension of the immunity granted to “owner[s]” of land to their employees and agents, we first consider the statute's text. Significantly, that text indicates that the legislature intended to extend the immunity of those who hold legal title to land to some others who stand in their stead—the owners of other lesser interests in land, including tenants and lessees, and those who qualify as “occupant[s]” or “person[s] in possession” of the land. The text does not, however, disclose a legislative intent to extend the immunity of owners to additional persons who stand in their stead, such as employees and non-employee agents.

Second, we look to the statute’s context and legislative history and note that, when it was originally enacted in 1971, the Act was supported by owners of forestland who wished to open their lands to the public for recreational uses such as hunting and fishing. Testimony, Senate Committee on State and Federal Affairs, SB 294, March 1, 1971 (written statement of Sam Taylor, a proponent of the bill). When originally enacted, the Act provided that “[a]n owner of land owes no duty of care to keep the land safe for entry or use by others for any recreational purpose or to give any warning of a dangerous condition, use, structure or activity on the land to persons entering thereon for any such purpose.” Or Laws 1971, ch 780, § 3. Thus, it appears that the legislature’s original intent was to relieve those who control the use of their land from responsibility to take affirmative steps to make their property safe for use by others; the legislature did not express an intent to benefit those who do not have the ability to make decisions about the use of land, or to relieve non-owners who commit negligent acts from responsibility for injuries caused by such acts.

The legislature amended the Act in 1995 to make it expressly applicable to public landowners. Or Laws 1995, ch 456, § 1. However, neither that change nor other changes
in the wording of the statute disclose an intent to change the purpose of the statute or to benefit additional classes of persons. Importantly, the legislature did not materially change the definition of owner in 1995. The 1971 Act provided that an “owner” is “the possessor of a fee title interest in any land, a tenant, lessee, occupant or other person in possession of the land.” Or Laws 1971, ch 780, § 1. In 1995, the legislature broke the definition into two sentences and changed the phrase in the first sentence from “possessor of a fee title interest in any land” to “possessor of any interest in any land.” Or Laws 1995, ch 466, § 1. However, the legislature did not change the categories of persons to whom it granted immunity; in 1995, the legislature exempted the same persons from liability that it had exempted in 1971. When the legislature made the Public Use of Lands Act expressly applicable to public landowners in 1995, it did not demonstrate an intent to broaden the Act to benefit those who do not have the ability to make decisions about the use of land, or to relieve non-owners who commit negligent acts from responsibility for injuries caused by such acts.

Defendants argue, however, that other statutory context points in that direction. Defendants call our attention to the fact that just four years earlier, in 1991, the legislature had amended the OTCA to provide that a claim against a public body is the sole remedy for the torts committed by employees of that public body. Or Laws 1991, ch 961, § 1. Defendants contend that, in light of that amendment, the Public Use of Lands Act must be read to shield governmental employees and agents; otherwise, the immunity it grants to governmental landowners would mean nothing. We disagree. The Public Use of Lands Act applies not only to public landowners, but also to private landowners. Just as it did before the amendment of the OTCA, the Public Use of Lands Act protects all “owner[s]” from liability in their capacity as “owner[s].” Just like private owners, public owners are exempt from liability for their own acts. The fact that public owners are not, in addition, exempt from liability for the acts of their employees or agents does not make the immunity granted by the Public Use of Lands Act illusory. The fact that public owners, like private owners, are not shielded from liability if they employ non-owners who
cause injury to others in the negligent performance of their duties does not mean that the Public Use of Lands Act has no purpose.

The legislature knows how to extend immunity to governmental employees and agents when it chooses to do so. See ORS 368.031 (immunizing counties and their officers, employees, or agents for failure to improve or keep in repair local access roads); ORS 453.913 (immunizing the state and local government and their officers, agents and employees for loss or injury resulting from the presence of any chemical or controlled substance at a site used to manufacture illegal drugs); ORS 475.465 (immunizing the state, DEQ, EQC, and their officers, employees, and agents from liability to a person possessing chemicals at alleged illegal drug manufacturing site). The legislature did not make that express choice in the Public Use of Lands Act. Should the legislature wish to extend the immunity provided to “owner[s]” to governmental employees and agents, it is free to do so, within constitutional bounds. However, we are unwilling to insert into the definition of “owner” in ORS 105.672(4) (2007) terms that the legislature did not include. See ORS 174.010 (office of judge is to ascertain what is contained in statute, not to insert what was omitted or to omit what was inserted).

We answer the Ninth Circuit’s first certified question as follows: Individual employees responsible for repairing, maintaining, and operating improvements on City-owned recreational land made available to the public for recreational purposes are not “owner[s]” of the land, as that term is defined in the Oregon Public Use of Lands Act. They are therefore not immune from liability for their negligence. We do not reach the second certified question concerning Article I, section 10, of the Oregon Constitution.

The certified questions are answered.

Another example, although enacted after the Public Use of Lands Act, is a 2011 statute that grants immunity relating to public trails. ORS 105.668(2) immunizes a “city with a population of 600,000 or more” and its “officers, employees, or agents” from liability for injury or damage resulting from the use of a trail or structures in a public easement or an unimproved right of way.
SB 327 A          STAFF MEASURE SUMMARY

Senate Committee On Judiciary

Action Date: 04/06/17
Action: Do pass with amendments. (Printed A-Eng.)
Vote: 5-0-0-0
Yea: 5 - Dembrow, Linthicum, Manning Jr, Prozanski, Thatcher
Fiscal: Fiscal impact issued
Revenue: Has minimal revenue impact
Prepared By: Whitney Perez, Counsel

WHAT THE MEASURE DOES:
Extends recreational immunity to employees, agents and volunteers of land owner when acting within scope of
duties and certain others with an ownership interest in an entity that is a land owner. Declares emergency, effective
on passage.

ISSUES DISCUSSED:
• Johnson v. Gibson, 358 Or. 624, (2015)
• Safety of children in parks and playgrounds
• -1 amendment and duty of care

EFFECT OF AMENDMENT:
Removes provision eliminating duty of care to maintain land.

BACKGROUND:
Senate Bill 327-A modifies the definition of owner for purposes of civil liability of land used by the public for
recreational purposes. Owner would include the holder of any legal or equitable title; officers, employees, volunteers
or agents of possessors of any interest in land while these persons are acting within the scope of assigned duties; and
the director, partner, general partner, shareholder, limited liability company member, limited liability partner or
limited partner of possessors of any interest in land.
SB 327 A  STAFF MEASURE SUMMARY

House Committee On Judiciary

Action Date: 05/25/17
Action: Do Pass the A-Eng bill.
Vote: 11-0-0-0
Yeas: 11 - Barker, Gors, Greenlick, Lininger, Olson, Post, Sanchez, Sprenger, Stark, Vial, Williamson
Fiscal: Fiscal impact issued
Revenue: Has minimal revenue impact
Prepared By: Whitney Perez, Counsel

WHAT THE MEASURE DOES:
Extends recreational immunity to employees, agents and volunteers of land owner when acting within scope of
duties and certain others with an ownership interest in an entity that is a land owner. Declares emergency, effective
on passage.

ISSUES DISCUSSED:
- Johnson v. Gibson, 358 Or. 624 (2015)
- Measure applies to public and privately owned land
- Concerns with recreational immunity for public sector entities

EFFECT OF AMENDMENT:
No amendment.

BACKGROUND:
Senate Bill 327-A modifies the definition of owner for purposes of civil liability related to land used by the public for
recreational purposes. Owner would include the holder of any legal or equitable title; officers, employees, volunteers
or agents of possessors of any interest in land while these persons are acting within the scope of assigned duties; and
the director, partner, general partner, shareholder, limited liability company member, limited liability partner or
limited partner of possessors of any interest in land.
Measure Description:
Provides recreational immunity to owner of land.

Government Unit(s) Affected:
Judicial Department, Department of State Lands, Oregon Department of Transportation (ODOT), Oregon Department of Fish and Wildlife (ODFW), Oregon Parks and Recreation Department (OPRD)

Summary of Expenditure Impact:

Analysis:
SB 327-1 provides recreational immunity to officers, employees, volunteers, and other agents of an organization providing recreational services, while acting within the scope of their assigned duties. In Johnson v. Gibson, 358 Or 624 (2016), the Oregon Supreme Court ruled that officers, employees, volunteers, and other agents of the owner, working within the scope of their assigned duties, were not considered "owners" for recreational purposes. This ruling, poses a significant risk to state agencies and their employees' engaging in recreational activities such as the Oregon Department of Fish and Wildlife's Access and Habitat, and Restoration and Enhancement programs, by exposing them to civil action while acting in the course of their official duties.

The fiscal impact of the measure is indeterminate. However, failure of the measure would likely result in increased insurance costs on the affected agencies, as well as potential increased Department of Justice fees as a result of potential future litigation.
Recreational Immunity

Outcome

Reserve the civil immunity Landowners and their employees had against for injuries sustained while
Recreational Immunity.

Possible after such lawsuits.

are utilized in a high degree by the citizens, contributing to quality of life and should not be compromised by the
opportunities in their community. Indeed, some have been forced to close parks. Oregon's Recreational Immunity
without effective Recreational Immunity; cities will expose themselves to unwarranted risks if they expand recreational
claims. Recreational Immunity has been stripped away.

result of their actions. For public agencies that are required to indemnify and defend their employees against such
Supreme Court has ruled that the employees of other agencies of the landowner may be liable if a person is injured as a
they were recreating and their property owner did not charge a fee for access to their land. However, the Oregon
Landowners in Oregon are immune from civil liability in the event a person is injured on their property provided that

Background

Oregon's Recreational Immunity Law.

Exposure to employers, officers and other agents of Landowners, including others, are exempt from liability under

Recreational Immunity
Enrolled

Senate Bill 327

Printed pursuant to Senate Interim Rule 213.28 by order of the President of the Senate in conformance with presession filing rules, indicating neither advocacy nor opposition on the part of the President (at the request of Senate Interim Committee on Business and Transportation)

CHAPTER ..........................................

AN ACT

Relating to recreational immunity from claims of persons entering land for certain purposes; amending ORS 105.672; and declaring an emergency.

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

SECTION 1. ORS 105.672 is amended to read:

105.672. As used in ORS 105.672 to 105.686:
(1) “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.
(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 the fee for a winter recreation parking permit or any other parking fee of $15 or less per day.
(2) “Harvest” has that meaning given in ORS 164.813.
(3) “Land” includes all real property, whether publicly or privately owned.
(4) “Owner” means:
(a) The possessor of any interest in any land, [such as] including but not limited to the holder of a fee 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;
(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.
Enrolled

Senate Bill 327

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CHAPTER ........................................................

AN ACT

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

SECTION 1. ORS 105.672 is amended to read:
105.672. As used in ORS 105.672 to 105.696:
(1) Charge 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.
(2) Harvest means that meaning given in ORS 164.813.
(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 a fee or 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;
(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) Recreational purposes includes, but is not limited to, outdoor activities such as hunting, fishing, swimming, boating, camping, picnicking, hiking, nature study, outdoor educational activities, waterskiing, winter sports, viewing or enjoying historical, archaeological, scenic or scientific sites or volunteering for any public purpose project.
(6) Special forest products means that meaning given in ORS 164.813.
(7) 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.
SECTION 2. This 2017 Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this 2017 Act takes effect on its passage.

Passed by Senate April 11, 2017

Lori L. Brocker, Secretary of Senate

Peter Courtney, President of Senate

Passed by House June 14, 2017

Tina Kotek, Speaker of House

Received by Governor:

...............................................M. ........................................................., 2017

Approved:

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Kate Brown, Governor

Filed in Office of Secretary of State:

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Dennis Richardson, Secretary of State