

## ATTACHMENT I: LIABILITY ISSUES

One of the hurdles to developing trails, paths, and public access to greenways in Illinois is the legal liability to property owners and municipalities in case of an accident. Here in Illinois there are two separate considerations; biking on roads and recreational access to off road property.

The sharing of roads by bicyclists and motor vehicles is fully recognized around the nation, in the Uniform and Illinois' Vehicle Codes, and in industry standards from IDOT, AASHTO, and the Federal Highway Administration. However, in the sharply-divided *Boub v. Wayne Township* decision in 1998, the Illinois Supreme Court granted immunity to local governments for injuries suffered by cyclists due to road condition. Further, this immunity vanishes for roads designated with bike-specific features such as signage or bike lane markings. Thus, if the municipality does nothing to designate a bikeway, they are not legally liable, but if they add on-road bike lanes or signage, then they incur a liability.

Since then, there have been several attempts to propose legislation which will remove municipality liability when specific bike lanes and/or signage are in place, but so far no legislation has been passed by both Illinois houses in the same session. In spite of the absence of such legislation, the legal exposure level has been very minimal, since bike route signs and even bike lanes exist in many scattered towns around the Illinois, and new on-road bikeways have since been installed in several other towns since 1998. Here is the list of those towns that have added bike lanes and signage since 1998.

- Darien (bike lanes)
- Downers Grove (bike lanes and signed bike routes)
- Edwardsville (bike lanes, New Poag Rd)
- Evanston (bike lanes and signed bike routes)
- Geneseo (bike lanes and signed bike routes)
- Joliet (signed bike routes)
- Moline (signed bike routes)
- Naperville (signed bike routes)
- Northbrook (Share the Road signs and “sharrows” markings on the road – without stripes)
- Oak Park (signed bike routes)
- Park Ridge (bike lanes and signed bike routes)
- Plainfield (bike lanes, Van Dyke Road)
- River Forest (signed bike routes)
- Rock Island (bike lanes)
- Roselle (bike lanes and signed bike routes)
- Schaumburg (bike lanes)
- Springfield (bike lanes)
- Skokie (bike lanes and signed bike routes)
- Urbana (bike lanes in 2007)
- Westmont (signed bike routes)

It is expected that new legislation will be proposed in the future to eliminate any potential liability to Illinois municipalities that install bike lanes and signage.

The situation with regard to recreational use of off-road property has been resolved recently with passage of new legislation. The Illinois Recreational Use Act has been in place for decades, but has been modified several times. The original 1965 version of the Recreational Use Act only protected owners of land “located outside the corporate limits of a city, village, or incorporated town and not subdivided into blocks and lots.” The Illinois legislature in the mid-1980s removed this restriction and thus opened the Act’s protections to both urban and rural landowners. In 2005, the Illinois legislature again amended the definition of land to preserve the immunity that was obtained for urban and suburban landowners in the 1987 amendments, but excluded all residential buildings regardless of location. Specifically, the legislature amended the definition of “Land” in the Act to read as follows: (a) “Land” includes roads, water, watercourses, private ways and buildings, structures, and machinery or equipment when attached to the realty, but does not include residential buildings or residential property. In addition, the legislature amended the definition to include *only* “hunting or recreational shooting” as recreational activities that would provide landowners’ immunity. In so limiting the permitted activities, the legislature has stripped protection from landowners who open their land for any other recreational, educational or conservation purpose, e.g., fishing and hiking, even if the land is opened without restriction to the “general public.”

In 2007, however, the act was again amended to include “any activity undertaken for conservation, resource management, exercise, or recreation,” thus removing the liability from property owners who allow visitors onto their land. Therefore, fear of legal liability should no longer be an issue in granting access to off road property in Illinois.