

based on the fact that the trails are funded from this particular source?

SENATOR WICKERSHAM: As opposed to...?

SENATOR CHAMBERS: Other trails in the state.

SENATOR WICKERSHAM: Well, I don't what other kind of trails we have, quite frankly. If you have a trail that you develop on your own property, let's say you're an owner of a section or two of land and you develop your own trail, I think that's an entirely different situation and I think an entirely different standard ought to apply. You are both the owner and the operator of the adjoining and the property and the trail.

SENATOR CHAMBERS: Thank you. Members of the Legislature, a landowner is not entitled under the law to use his or her property in any way desired. The courts have established standards of negligence apart from statutory law. A person can have what is called an attractive nuisance on his or her own property and an attractive nuisance is a hazardous implement, activity or condition which would draw people onto that land, and even if there's a fence but the fence can be scaled easily or gone under or around, if the person comes on that land and is harmed by the attractive nuisance, generally it involves a child, that landowner is liable. If a landowner sets a trap, a spring gun or something of that kind, so that if a person broke into his or her home and was injured by it, that landowner, that homeowner, is liable. The innocents are as likely to be harmed as those who might be doing something not allowed under the law. This amendment is dealing more...with more than mere liability. If you want to talk about a rural-urban split, you could, but it goes even farther and deeper than that. I think it may have something to do with things we've discussed earlier in the session. However, what you cannot do constitutionally is to have people who are similarly situated accorded different degrees of protection from harm. Equal protection of the law means just what it says, that when people are similarly situated and the law is to come into play with reference to those people, they must be treated the same. So, despite whatever is Senator Wickersham's underlying motivation, the Legislature should be careful about establishing a different standard for treating its citizens. I don't think that this amendment is being offered for the purpose of improving the bill or helping this concept of the recreational trails. I think it's in the nature of payback