BISHOP, J., dissenting. At the outset, I agree with my colleagues in the majority that the language of General Statutes § 7-163a is facially clear and unambiguous. I also agree that the statute does not contain an implicit waiver of sovereign immunity. I part company with the majority on the question of whether the statute is unworkable and, therefore, whether we may resort to the legislative history of the statute to more fully understand its intent. Therefore, I respectfully dissent.

General Statutes § 1-2z provides in relevant part that if the meaning of a statute can be gleaned from its plain and unambiguous text, extratextual evidence of the meaning of the statute shall not be considered unless the application of the plain meaning would yield "absurd or unworkable results . . . ." Although § 1-2z does not define the term "unworkable," a review of decisional law on this point suggests that the term connotes the notion of practicality. For example, in *State* v. *Cain*, 223 Conn. 731, 613 A.2d 804 (1992), our Supreme Court found unworkable the application of the language of a statute and rule of practice to 911 calls. There, the statute and rule in question plainly and unambiguously required the state to produce witness statements to a defendant for cross-examination purposes. Concluding that it would be impracticable to expect police departments to retain tapes of 911 calls indefinitely, the court found that application of the statute by its terms would be unworkable and, thus, excepted tapes from 911 calls from the statute's requirements. Id., 746–47. Similarly, in *State* v. *Brown*, 242 Conn. 389, 699 A.2d 943 (1997), the court found that a literal interpretation of the plain language of a statute and rule of practice would lead to an unworkable result. There, the court was confronted with a defendant's claim that the information against him should have been dismissed because he had been denied the right to a speedy trial in accordance with the provisions of General Statutes § 54-82m and Practice Book §§ 956B, 956C and 956D (now §§ 43-39, 43-40 and 43-41) even though his counsel was trying a case elsewhere when he made his claim for a speedy trial. Affirming the trial court's denial of the defendant's motion, the Supreme Court concluded that strict adherence to the plain text of the statute and the rules would be unworkable because such an application would deny to the court its inherent power to make an accommodation between one's right to a speedy trial and the unavailability of counsel. *State* v. *Brown*, supra, 406. Finally, in the same vein, this court concluded in *Blasko* v. *Commissioner of Revenue Services*, 98 Conn. App. 439, 910 A.2d 219 (2006), that the application of the plain text of General Statutes § 12-700a (d) (2) would be unworkable because to do so would likely create a mathematical impossibility. As a consequence, the

court concluded: "As such, we are left with what appears to be an absurd or unworkable result, and, therefore, we look to extratextual evidence to determine the meaning of the statute." *Blasko* v. *Commissioner of Revenue Services*, supra, 455.

General Statutes § 7-163a has two principal facets: the shifting of liability and the responsibility for public safety. As noted by the majority, § 7-163 permits a municipality that owns a sidewalk to enact an ordinance to shift the responsibility for clearing ice and snow from the sidewalk to an abutting landowner and to make the abutting owner liable for not meeting its statutory responsibility. However, because the abutting landowner in this instance is the state, the burden and responsibility shifting features of the statute cannot be accomplished. Therefore, I believe that literal adherence to the statute's text is unworkable in the instance at hand.

In its brief, the defendant city of New Britain argues that if the legislature had wanted to exempt the state from liability under § 7-163a, it could easily have done so and that the only logical interpretation of § 7-163 is that by "necessary implication," the legislature intended all property owners, including the state, to be accountable for sidewalk snow and ice claims. This position contravenes established sovereign immunity jurisprudence.

Pursuant to general tenets of sovereign immunity, the state is immune from suit and from liability unless its immunity has been expressly waived. See generally *McIntosh* v. *Sullivan*, 274 Conn. 262, 268, 875 A.2d 459 (2005). Sovereign immunity is comprised of two concepts, immunity from liability and immunity from suit. "There is . . . a distinction between sovereign immunity from suit and sovereign immunity from liability. Legislative waiver of a state's suit immunity merely establishes a remedy by which a claimant may enforce a valid claim against the state and subjects the state to the jurisdiction of the court. By waiving its immunity from liability, however, the state concedes responsibility for wrongs attributable to it and accepts liability in favor of a claimant." *St. George* v. *Gordon*, 264 Conn. 538, 550, 825 A.2d 90 (2003). Our Supreme Court has stated that "[w]here there is any doubt about [the] meaning or intent [of the statute, it is] given the effect which makes the least rather than the most change in sovereign immunity. . . . [T]he state's sovereign right not to be sued without its consent is not to be diminished by statute, unless a clear intention to that effect on the part of the legislature is disclosed, by the use of express terms . . . ." (Citation omitted; internal quotation marks omitted.) *White* v. *Burns*, 213 Conn. 307, 312–13, 567 A.2d 1195 (1990). In this case, because § 7-163a contains neither a waiver of immunity from suit nor from liability, neither can be inferred.

Furthermore, § 7-163a is not made workable simply because the plaintiff, Jeanne Rivers, may file a claim with the claims commissioner. Indeed, the plaintiff acknowledges that she may seek permission from the claims commissioner, pursuant to General Statutes § 4-160, to bring suit against the state. This, too, however, is problematic. General Statutes § 4-160 (a) authorizes actions against the state "on any claim which, [in the opinion of the claims commissioner], presents an issue of law or fact under which the state, were it a private person, could be liable." In this instance, the state, were it a private citizen, would have no common-law duty to keep the sidewalk in question reasonably clear of ice and snow because the sidewalk is not within its possession. Thus, the only basis on which the claims commissioner could find the state liable, if it were a private party, would be by the application of § 7-163a, the statute in question. It is uncertain to me whether the commissioner would or could apply the statute's requirements to the state, even as a private party, because the legislature could readily have imposed a duty of reasonable care on the state in this statute even absent a waiver of immunity from suit. See *Flanagan* v. *Blumenthal*, 265 Conn. 350, 357, 828 A.2d 572 (2003) (legislature may waive state's immunity from liability without also waiving state's immunity from suit). It is clear that § 4-160 merely gives a claimant the right to make a claim. That is, the claims statute creates no substantive rights against the state for which a claimant is entitled to redress. See *Chotkowski* v. *State*, 240 Conn. 246, 270, 690 A.2d 368 (1997). Therefore, although a claimant may arguably present a claim to the claims commissioner, it is not apparent to me that the commissioner would or could honor such a claim in this instance.[1]

Aside from the difficulties regarding the imposition of liability on the state for damages, I believe that § 7-163a is unworkable as a mechanism to provide for public safety on municipal sidewalks.

That § 7-163a has a public safety purpose cannot reasonably be debated. In discussing General Statutes § 13a-144, the state highway statute analogous to General Statutes § 13a-149 regarding municipal roads and sidewalks, our Supreme Court noted that although the statute does not make the state an insurer of the safety of travelers, it does impose on the state the duty of reasonable care to keep roads in a reasonably safe condition for a reasonably prudent traveler. *Serrano* v. *Burns*, 248 Conn. 419, 426, 727 A.2d 1276 (1999). In this case, however, because § 7-163a does not constitute a waiver of the state's immunity from liability, it is difficult to conceive how it can be implied from the statute that it imposes any duty on the state for public safety regarding a sidewalk not located on state property. Thus, it is the inevitable consequence of the majority's

holding that § 7-163a relieves the municipality of its public safety responsibility without shifting it to the abutting landowner because the abutter happens to be the state. I believe this circumstance alone makes the statute unworkable and permits the court, on review, to examine the purpose of the statute beyond its text.

A review of the legislative history makes it plain that the intent of the General Assembly in enacting § 7-163a was to permit a municipality to pass an ordinance to shift the burden of liability regarding snow and ice on municipal sidewalks from the municipalities' taxpayers to abutting private property owners. On April 31, 1981, when introducing the bill to the House of Representatives, Representative Alfred J. Onorato commented: "Mr. Speaker, basically this bill would permit the municipality the option of providing an [action to] recover [for] injuries from snow and ice cases, provided by ordinance, shifting the burden onto private property [that] does not come under the direct control of the city or the municipality." 24 H.R. Proc., Pt. 12, 1981 Sess., p. 3773. Representative Onorato also commented: "The homeowner would be liable except for affirmative acts by the municipality, or any of its subdivisions." Id., p. 3777. Later, on May 26, 1981, Representative Onorato, in responding to a concern that the bill would impose a greater duty on an abutting landowner than existent law then imposed on the municipality, commented: "[I]t imposes no burden on them that they're not now already paying. They're already paying for their homeowners insurance which is an extension of their yard at this point . . . ." 24 H.R. Proc., Pt. 21, 1981 Sess., p. 7058.

Although the legislative history regarding § 7-163a is scant, it is plain that in enacting this legislation, the bill's principal proponent urged it on his colleagues as a burden shifting vehicle from the taxpayers to abutting private landowners. Today's holding is not consonant with that purpose. Indeed, the effect of the majority opinion is not to shift the burden of liability and corresponding responsibility from the municipality to another party, but merely to relieve the municipality of any duty regarding snow and ice on its sidewalks to the detriment of public safety and to the unreasonable disadvantage of claimants who happen to fall on a municipal sidewalk abutted by state property.

For the reasons stated, I would conclude that § 7-163a is inapplicable to the circumstances at hand in which the state is the abutting landowner. As a consequence, I would reverse the judgment and remand the matter for further proceedings. Accordingly, I respectfully dissent.

[1] Although the record reflects that the state has employed an independent contractor for snow and ice removal from the sidewalk in question, I do not believe that this act is legally significant.