SCHALLER, J., dissenting. I agree with two basic premises of the majority opinion. First, I agree that General Statutes § 7-163a (b) provides plainly and unambiguously that the "city . . . *shall not be liable* to any person injured . . . caused by the presence of ice or snow on a public sidewalk unless such municipality is the owner or person in possession and control of land abutting such sidewalk . . . ." (Emphasis added.) Second, I agree that nothing in the language of § 7-163a constitutes an explicit or implicit waiver of sovereign immunity.[1] I disagree, however, with the majority's conclusion, which is contrary to the plain and unambiguous language of § 7-163a, that the ordinance adopted by the named defendant, the city of New Britain (city), in accordance with § 7-163a, does not relieve the city of liability when the landowner abutting the city sidewalk is the state. The majority reaches this conclusion in two steps. First, it determines that the plain meaning of the statute yields an "unworkable" result because it fails to provide for public safety by failing to transfer to the state as a landowner both the duty to clear an abutting sidewalk and liability for failure to do so, and the result is that the plaintiff, Jeanne Rivers, lacks a direct right of action against the abutting owner in the present case. Second, on the basis of its conclusion that the plain language yields an unworkable result, the majority consults the legislative history of the statute and reasons that its history supports the conclusion that the legislature intended that § 7-163a would not relieve the city of liability when the landowner abutting the city sidewalk is the state. I disagree with the analysis of the majority in both of these steps and address each in turn.

I agree with the trial court and the Appellate Court majority that § 7-163a in no uncertain terms relieves the city of liability by virtue of enacting ordinance § 21-8.1c. *Rivers* v. *New Britain*, 99 Conn. App. 492, 497–98, 913 A.2d 1146 (2007). By enacting that ordinance, the city transferred its duty to clear the abutting sidewalk to the state. Because the doctrine of sovereign immunity shields the state, absent its consent, from liability and suit, the plaintiff's remedy lies with the claims commissioner or with an action against the contractor that provided the snow removal services on behalf of the state.[2]

Because the statute is plain and unambiguous, the key to the majority's approach in avoiding the application of the plain language of the statute is the language in General Statutes § 1-2z that authorizes the court, in ascertaining the meaning of the statute, to look beyond the plain language to the legislative history if the plain meaning of the text yields "unworkable results . . . ."

The "unworkable [result]" yielded by application of the plain meaning of the text of the statute, according to the majority, is that the statute fails to provide for the public safety because it does not allocate a duty to clear the sidewalk when the abutting landowner is the state.

I begin with two observations. First, the meaning of the term "unworkable" as used in § 1-2z is itself a question of statutory interpretation. Second, the question of its meaning in the context of § 1-2z is one that we have not yet addressed, since our focus in the threshold inquiry mandated by § 1-2z most often has been aimed at determining whether the statutory term or terms at issue are plain and unambiguous. If we are to widen that focus to include inquiries as to whether an application of undisputedly plain and unambiguous language yields an unworkable result, we should employ the established tools of statutory interpretation in defining the term "unworkable" as used in § 1-2z in order to further the legislative purpose underlying that statute.

The meaning of "unworkable" as used in § 1-2z must be ascertained consistently with "the dictates of § 1-2z just as we would if we were construing any other statute." *Hummel* v. *Marten Transport, Ltd.*, 282 Conn. 477, 497, 923 A.2d 657 (2007). Because the statute does not define "unworkable," and its meaning is not plain and unambiguous, it is appropriate to look to extratextual sources to determine its meaning. The legislative history does not reveal the meaning of "unworkable." Although dictionary definitions of the term "unworkable" are pertinent, it is appropriate to look to our prior use of the term in order to discern its meaning in the statute because we have employed the term repeatedly in the context of statutory interpretation prior to the passage of § 1-2z. *Considine* v. *Waterbury*, 279 Conn. 830, 844, 905 A.2d 70 (2006) ("the legislature is presumed to be aware of prior judicial decisions involving common-law rules" [internal quotation marks omitted]). My review of our case law reveals that we have employed the term "unworkability" in two primary senses, either to signify that an interpretation of a statute would yield an impracticable result or an absurd one.

The most common way in which we have used the term "unworkability" has been to mean "impracticability." The cases in which we have rejected an interpretation of a statute as impracticable generally have involved scenarios in which, if we accepted the proposed interpretation, some person, entity or agency would be required by statute to comply with a standard that was not capable of being applied under the known facts, too indefinite to provide any guidance, or simply not capable of being carried out at all under the facts of the case. In other words, we rejected the proposed interpretation because it literally could not have been carried out by those obligated to apply the statute. We

did not use the term "impracticable" to mean that we considered the policies underlying the statutes to be unwise, unsound or undesirable. Rather, our focus was on the practicability of carrying out the statutes. For example, in *Manners* v. *Waterbury*, 86 Conn. 573, 575–76, 86 A. 14 (1913), we concluded that unless a statute or charter provision required it, the defendant city was under no constitutional obligation to give personal notice to an owner of land that had not been taken or injured, of a hearing before the department of public works (department) whose only duty was to prepare a survey and layout of an improvement proposed by the board of alderman. *Manners* involved the laying out and construction of a new street by the city, which assessed special benefits against the plaintiff, an owner of land in the neighborhood of, but not abutting, the proposed street. Id., 574–75. The plaintiff challenged the assessment on the ground, inter alia, that he never received notice from the department of the proceedings before it. Id. The trial court found for the plaintiff and annulled the assessment, and the city appealed. Id., 574. In reversing the trial court, this court considered the structure of the assessment proceedings, as mandated by the city charter. That is, the court considered it significant that, according to the charter, the department was required to conduct its survey and to complete the layout of the proposed improvement prior to any determination by the city's bureau of assessment as to which property owners would "be made subject to the payment of benefits . . . ." Id., 576. Requiring the department to give notice to possibly affected property owners would have rendered the "proceeding prescribed by the legislature a practically unworkable one," the court reasoned, because it would have required the department to "forecast" which property owners would be identified by the bureau of assessment as persons affected by the proposed public improvement. Id.

Again focusing on the concept of workability as impracticability, in *State* v. *Cain*, 223 Conn. 731, 733, 613 A.2d 804 (1992), we addressed the question of "whether a 911 emergency telephone call is a 'statement' within the meaning of Practice Book § 749 (2) [now Practice Book § 40-15 (2)]."[3] Practice Book § 40-15 (2), defines the term " 'statement,' " for purposes of the rules of practice concerning prosecutorial disclosure, as including: "A stenographic, mechanical, electrical, or other recording, or a transcription thereof, which is a substantially verbatim recital of an oral statement made by a person and recorded contemporaneously with the making of such oral statement." See also *State* v. *Cain*, supra, 733 n.1. Although we did "not regard the language of [Practice Book § 40-15 (2)] to be so absolutely clear that further interpretation [was] unnecessary," we also stated that "even if we were to conclude that the language of [Practice Book § 40-15 (2)] is clear,

a literal interpretation of that section would lead to an unworkable result." Id., 745. Specifically, we noted that tape recordings of 911 telephone calls were "subject to the regulations regarding preservation and disposition of such records promulgated by the public records administrator pursuant to General Statutes § 11-8." Id., 741. Because of financial and administrative concerns, the public records administrator had determined that municipalities were required to preserve recordings of 911 telephone calls for thirty days, after which they could erase the tape and reuse it. Id., 742–43. If we had interpreted the term " 'statement' " in Practice Book § 40-15 (2), however, to include recordings of 911 telephone calls, "each municipality would be required by the provisions of the Practice Book to preserve indefinitely tapes of all 911 emergency telephone calls, because it would be impossible for the municipality to determine at the instant of each such call whether it would be required to produce the tape recording at some time in the future." Id., 746–47. The onerous burden this would have placed on municipalities would have yielded an unworkable result, because it would have been burdensome or unwieldy—in short, impracticable. Id., 747–48. After we arrived at that conclusion, we then looked to the history and purpose of Practice Book § 40-15 (2), and concluded ultimately that recordings of 911 telephone calls were not statements pursuant to Practice Book § 40-15 (2). Id., 753–55.

We applied the rule in the criminal context in *State* v. *Ledbetter*, 263 Conn. 1, 818 A.2d 1 (2003), in which we rejected the defendant's contended interpretation of the meaning of the term "parent" as used in General Statutes § 46b-137 (a), which renders inadmissible a child's confession to a police officer unless that confession was made in the presence of a parent. The defendant claimed that the term included "only a parent who has a sufficiently close relationship with his or her child to provide meaningful guidance to that child . . . ." *State* v. *Ledbetter*, supra, 11 n.19. We rejected that interpretation because it was not supported by the statutory language, and added that, "even if we assume that the defendant's interpretation did find support in the statutory language, that interpretation would be unworkable inasmuch as it would require the police to ascertain, in each case, whether a particular parent-child relationship satisfies the nebulous standard proposed by the defendant." Id.

In *State* v. *Brown*, 242 Conn. 389, 390–93, 699 A.2d 943 (1997), the issue before us was whether the speedy trial provisions of General Statutes § 54-82m and Practice Book §§ 956B and 956C, now Practice Book §§ 43-39 and 43-40, required the dismissal of a criminal action against a defendant when the reason that the trial failed to commence within thirty days of the defendant's speedy trial motion was because the defendant's attorney was engaged in a trial in another case. We first

looked to the language of § 54-82m, noting that it "requires that the rules adopted by the judges of the Superior Court, 'to assure a speedy trial for any person charged with a criminal offense . . . shall provide that (1) in any case in which a plea of not guilty is entered . . . [and] when such defendant is incarcerated in a correctional institution of this state pending . . . trial . . . the trial of such defendant shall commence within eight months from the filing date of the information . . . or from the date of arrest, whichever is later; and (2) if a defendant is not brought to trial within the time limit set forth in subdivision (1) and a trial is not commenced within thirty days of a motion for a speedy trial made by the defendant at any time after such time limit has passed, the information . . . shall be dismissed. Such rules shall include provisions to identify periods of delay caused by the action of the defendant, or the defendant's inability to stand trial, to be excluded in computing the time limits set forth in subdivision (1).' " Id., 403, quoting General Statutes § 54-82m. We then noted that, although § 54-82m expressly authorizes the court to identify periods of delay in computing the time limits set forth in subsection (1) of the statute, no such authority is granted to the court to extend the thirty day period set forth in subdivision (2). *State* v. *Brown*, supra, 404–405. We also noted that the rules of practice drew the same distinction between the initial eight month period governed by subsection (1) of § 54-82m, and the thirty day period governed by subsection (2) of the statute, and allowed the court to identify periods of delay in computing the time limits with respect to subsection (1) only. Id., 405. We concluded, however, that a "literal interpretation" of the statutory language would yield unworkable results, such as leaving the court with the choice of either granting a dismissal or requiring a criminal defendant to proceed to trial without his original attorney, and would even require the court to grant a dismissal if the defendant fled the jurisdiction. Id., 405–406. In summarizing, we stated, "if a literal application of the language of the statute would generate a clash between the defendant's rights to a speedy trial and to adequate representation, the literal application must yield to the power of the court to make a reasonable accommodation between those two rights . . . ." Id., 406.

As a final illustration of the concept of impracticability, in *State Water Commission* v. *Norwich*, 141 Conn. 442, 107 A.2d 270 (1954), the question before us was whether a statute that empowered the water commission to enforce any of its orders issued to a municipality by bringing an action in the Superior Court, and also authorized the court subsequently to issue an " 'appropriate decree or process' "; id., 443; included a grant of authority to the court, not only to enforce such orders, but also to modify an order to permit enforcement where the date of compliance already had passed. Id.,

444. The court concluded that the statute did include such a grant of authority, reasoning that such a modification was a "[condition] . . . necessary to the adequate enforcement of the order." Id., 445. The court explained: "It is logical to assume that the legislature intended that the court should have the power to act effectively and not that it should issue a useless, unworkable decree." Id. In other words, we rejected the interpretation of the statute that would have granted the court a power that it would not have been able to carry out, because that interpretation would have granted the court the power to issue an " 'appropriate' " decree, but deprived the court of the authority to make the modification necessary to render the decree " 'appropriate.' " Id.

The second sense in which we have used the term "unworkable" is to mean "absurd." In the cases relying on this sense of "unworkable," we essentially have employed a reductio ad absurdum argument, illustrating that the proposed interpretation of a statute would yield a ridiculous result, and rejecting the interpretation on the premise that the legislature never would have intended such an absurd result. For example, in *Pecora* v. *Zoning Commission*, 145 Conn. 435, 144 A.2d 48 (1958), superseded by statute on other grounds as stated in *Campion* v. *Board of Aldermen*, 85 Conn. App. 820, 833–34, 859 A.2d 586 (2004), rev'd on other grounds, 278 Conn. 500, 899 A.2d 542 (2006), we considered whether the statutory provision that zoning regulations must " 'be made in accordance with a comprehensive plan and . . . be designed to lessen congestion in the streets' "; id., 440; barred a zoning commission from "changing a tract [of land] from a residence A to a commercial B-C zone, thereby authorizing its use for a regional shopping center." Id., 437. We concluded that an interpretation barring the proposed change on the ground that there would be greater traffic flow would render the statute unworkable, because under that interpretation, "a residence area could seldom, if ever, be changed to a business or industrial use, regardless of the recommendations in a comprehensive plan, since almost necessarily there would be a resultant increase in street traffic in the immediate area." Id., 440. This result, so inconsistent with the broad discretion accorded to zoning commissions, is one that is clearly absurd.

Applying this common-law background to the interpretation of the term "unworkable" in § 1-2z, it is appropriate to define that term under our most commonly employed usage, as meaning impracticable, particularly since § 1-2z includes absurdity as an independent basis for going beyond the plain language of a statute to consult extratextual sources. Nothing in the majority opinion persuades me that the interpretation of § 7-163a in accordance with the plain language of the statute—which relieves the city of liability even under the facts

of the present case, where the abutting landowner is the state—renders the statute unworkable or impracticable.

The majority begins with a definition of "unworkable" that is essentially the same as that arrived at by a review of our case law. That is, relying solely on dictionary definitions, the majority defines the term as " 'not capable of being put into practice successfully' " or " 'not capable of being put into successful operation . . . .' " The majority's application of the term, however, is not consistent with those definitions. Rather than demonstrating that the statute cannot be carried out, in any practicable way, pursuant to the plain statutory language, the majority relies chiefly on its concern that some sidewalks might not be cleared and that some injured persons might be left with what the majority considers to be an inadequate remedy. The majority concludes that the city's authority to divest itself of liability, coupled with the state's immunity from liability or suit, is inconsistent with the majority's interpretation of the purpose underlying the statute, that is, to secure the public safety and to enable injured parties to bring legal action. The majority concludes, in effect, that the statutory language used by the legislature failed to enact the legislative policy that it intended to carry out. Put another way, the policy that is reflected in the language is, in some ways, incomplete, unwise or undesirable.

It is important at this juncture to emphasize the purpose of the "unworkability" inquiry. The point of § 1-2z is that, unless the plain and unambiguous language of the statute yields unworkable or absurd results, extratextual sources may not be consulted in ascertaining the meaning of the statute. In order to arrive at its threshold conclusion, however, that the statute is rendered unworkable if interpreted in accordance with the plain language of the statute, a conclusion that would allow the court, under the strictures of § 1-2z, to consult extratextual sources, the majority relies on an extratextual source, namely, what it presumes is the legislative purpose underlying the statute, to promote public safety. See *Windels* v. *Environmental Protection Commission*, 284 Conn. 268, 294–95, 933 A.2d 256 (2007) ("[w]hen a statute is not plain and unambiguous, we also look for interpretive guidance to the legislative history and circumstances surrounding its enactment, *to the legislative policy it was designed to implement*, and to its relationship to existing legislation and common law principles governing the same general subject matter" [emphasis added; internal quotation marks omitted]). In this case, in which the plain language expressly shifts liability from the town to abutting owners, without exception, the majority's rationale, in effect, circumvents the purpose of § 1-2z, which is to prohibit courts from considering extratextual sources in ascertaining the meaning of a statute until *after* the threshold inquiry, and only if that inquiry reveals that

the language is not plain and unambiguous or that the plain language yields absurd or unworkable results. The fact that legislative policy underlying a statute may be unworkable in the way that it is carried out does not mean that the statute is unworkable for purposes of disregarding the plain language.

Although the outcome of this case should turn solely on the interpretation of the statute, and not on the remedy available to the plaintiff, I note that the office of the claims commissioner today performs a similar function to that performed by a petition to the king under English common law. We examined the genesis of the office of the claims commissioner in *Miller* v. *Egan*, 265 Conn. 301, 318, 828 A.2d 549 (2003). "The office of the claims commissioner was created by Public Acts 1959, No. 685. Prior to 1959, a claimant who sought to sue the state for monetary damages, in the absence of a statutory waiver by the state, had but one remedy—namely, to seek relief from the legislature, either in the form of a monetary award or permission to sue the state. See Conn. Joint Standing Committee Hearings, Appropriations, Pt. 3, 1959 Sess., pp. 919–20." *Miller* v. *Egan*, supra, 318. Pursuant to General Statutes § 4-158 (a), the claims commissioner "may (1) order that a claim be denied or dismissed, (2) order immediate payment of a just claim in an amount not exceeding seven thousand five hundred dollars, (3) recommend to the General Assembly payment of a just claim in an amount exceeding seven thousand five hundred dollars, or (4) authorize a claimant to sue the state, as provided in [General Statutes §] 4-160." It is worth emphasizing that, under § 4-160 (a), "[w]hen the Claims Commissioner deems it just and equitable, the Claims Commissioner may authorize suit 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."[4] The question that would be before the claims commissioner, therefore, would not be limited to common-law duties to remove snow and ice, as the majority argues, but would also include any statutory liability that the state would have incurred, "were it a private person . . . ." General Statutes § 4-160 (a). The limit to common-law liability that the majority reads into § 4-160 (a) simply is not present in the language of the statute.

Finally, I note that the result of applying the plain language of § 7-163a to the facts of this case, namely, the fact that the plaintiff must rely on the discretion of the claims commissioner in obtaining relief, is a by-product of the very nature of sovereign immunity: it leaves some people with a less than ideal remedy against the state. It is, however, a mistake to decide the present case on the basis of the plaintiff's access to a remedy. Nor is it proper for us to construe statutory language that is undesirable or even unwise contrary to its plain meaning in order to correct an apparent

wrong, whether it be a deficiency in legislative policy or an instance of unfairness. If it can be said that a close reading of the statute results in unfairness to persons such as the plaintiff, it can also be said that the result of the majority's interpretation will be unfair to the city in the present case. No one could reasonably contend that the city should have known, by a reading of § 7-163a, that it had a duty to clear the sidewalk in question. Not only did the plain language of the statute relieve the city of such a duty, but, in addition, the state had undertaken the duty of clearing the sidewalk by hiring a contractor. If the job was improperly done, the fault was the state's, the city having no role in the process. Under the circumstances, it hardly seems fair that the city and its taxpayers are *left holding the bag.*

If the legislature has indeed failed to provide for a public safety need, the public must look to the legislature to remedy that omission, if it so chooses. Even assuming that the legislature has failed to specify who has the obligation to clear the sidewalk in this case, the failure to specify the obligation and corresponding liability does not make the result absurd, bizarre or unworkable. A legislative policy that is incomplete or even unwise is not necessarily absurd or unworkable. Because there is no statute requiring sidewalks along all public highways within municipalities, the public would be no worse off with an uncleared sidewalk than with no sidewalk at all. Because it is neither absurd nor unworkable to have no sidewalk at all, how can it be absurd or unworkable to have an uncleared one?[5]

I turn now to the second issue on which I part from the majority opinion. Although the majority does find legislative history that it determines supports the conclusion that the legislature, in adopting Public Acts 1981, No. 81-340, now codified at § 7-163a, was concerned about shifting liability from the municipality to the private abutting owners, the legislative history does not support the majority's interpretation because it is silent as to what happens when the abutting owner is the state. The legislative history is, at best, inconclusive. The majority makes much of references in the floor debate of the bill to "private landowner[s]"; 24 S. Proc., Pt. 10, 1981 Sess., p. 3247, remarks of Senator Eugene A. Skowronski; and "homeowners." 24 H.R. Proc., Pt. 21, 1981 Sess., pp. 7051–52, remarks of Representative Alfred J. Onorato. Much of the debate, in fact, centered on whether the bill would impose a financial burden on homeowners. All that the legislative history reveals is what is already evident from the facts of the present case—that the legislature was not thinking about the possibility of the abutting landowner being the state. I do not believe that we should ignore the plain and unambiguous language of the statute in order to construe it according to our conception of how it might have been drafted. I would leave the issue for the legislature to decide.

For the foregoing reasons, I respectfully dissent.

[1] The majority agrees with the Appellate Court's conclusion that § 7-163a is not explicit enough to constitute a waiver of sovereign immunity. *Rivers* v. *New Britain*, 99 Conn. App. 492, 497, 913 A.2d 1146 (2007). "There is, of course, 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." (Internal quotation marks omitted.) *Martinez* v. *Dept. of Public Safety*, 263 Conn. 74, 79, 818 A.2d 758 (2003). In determining that § 7-163a does not constitute a waiver of the state's sovereign immunity, neither the majority nor the Appellate Court discussed the distinction between immunity from suit and immunity from liability. I conclude that neither type of immunity was waived in the present case either by "the use of express terms or by force of a necessary implication." (Internal quotation marks omitted.) *Duguay* v. *Hopkins*, 191 Conn. 222, 228, 464 A.2d 45 (1983).

[2] It was undisputed that the state hired a contractor to provide snow removal services for the sidewalk abutting the state owned property, and that these services were provided one day prior to when the plaintiff was injured.

[3] Although an earlier revision of the Practice Book, with a different numbering system, was applicable when this court decided *State* v. *Cain*, supra, 223 Conn. 733 n.1, the relevant language remains unchanged. For convenience, we refer to the current revision of the Practice Book.

[4] It is not useful to engage in speculation, as the majority does, as to how the claims commissioner would exercise that discretion.

[5] The majority contends that an uncleared sidewalk presents a greater issue of "unworkability" than a road that has no abutting sidewalk at all because the city has, by constructing the sidewalk, "invite[d]" pedestrians to use it. In deciding whether to use an uncleared public sidewalk, however, surely reasonable pedestrians will be governed by their perceptions of risk rather than their assumptions about responsibility.