ITL: HB 1112 – Relative to snow removal responsibilities in residential lease agreements

Position: Opposition (ITL)

Bill Summary:
This bill inserts a new section, RSA 540-A:3-b, requiring that responsibility for snow and ice removal be explicitly stated in every written residential lease. If the lease is silent, responsibility for clearing snow and ice from common areas—defined by use (driveways, walkways, entryways used by multiple tenants)—defaults to the landlord. The bill permits shifting snow removal responsibilities to a tenant only if the agreement is express, "voluntary," and included in the lease. Local sidewalk/right-of-way ordinances are not affected.

Key Points:

1. **Elevates snow removal from an operational service to a statutory right** by placing it in RSA 540-A (New Hampshire's tenant-rights and prohibited practices framework) rather than leaving it to ordinary lease drafting and tort standards.
2. **Likely affects slip-and-fall liability** by creating a statutory presumption of duty that will be cited in negligence litigation, even though the bill does not articulate any standard of performance or timeline.
3. **Creates a drafting mandate plus a default presumption** that may substitute legislative intent for the parties' actual arrangement, including common hybrid/shared practices.
4. **"Express, voluntary, included in the lease" is not neutral.** "Voluntary" is undefined and invites litigation over negotiability in adhesion contracts. "Express" can reduce the role of course-of-performance arguments, potentially enabling strategic drafting where the lease assigns snow duty to the tenant while the landlord performs removal 'as a courtesy,' complicating negligence and reliance disputes.
5. **Ambiguous as applied to offsite/accessory parking and access routes**: by defining "common areas" by *use* rather than *ownership or control*, the bill risks assigning duty to landlords for areas provided to tenants (e.g., offsite leased parking) where the landlord may not control snow removal.
6. **Attempts to mirror the restricted vs. nonrestricted logic of 540** in specifically the area where 540 contains ambiguity in the regulation of parking. Are parking spaces leased by a landlord from a third party for use by residential tenants considered a residential appurtenance or are they commercial, B2B arrangements not bound by the proposed language?
7. **Problems of real-world operations are left unaddressed**: partial performance, conflicting responsibility, and cooperation failures (e.g., tenant refuses to move vehicles) create disputes over whether the duty is one of "reasonable efforts" or guaranteed "outcome."

Full Testimony

Mr. Chair, members of the Committee—

My name is Christopher Freeman. I am a housing provider in Keene, Walpole, and Lebanon, NH and a founding advisory board member of the Monadnock Housing Collaborative. All views expressed today are my own.

I'm here to urge the committee to find HB 1112 **Inexpedient to Legislate**.

I want to begin by acknowledging the appeal of this bill. On its face, it sounds like common sense: winter is a fact of life in New Hampshire and snow removal responsibilities should be clear. As a matter of best practice, most competent landlords already draft this explicitly.

But the question before the committee is not whether clarity is desirable. The question is whether this belongs in **RSA 540-A**, and what legal consequences we trigger by putting it there.

RSA 540-A is not a "helpful drafting reminders" chapter. It is the chapter New Hampshire uses to **define prohibited practices** and to provide for expedited enforcement. When we add obligations to 540-A, we do not merely encourage good behavior—we convert ordinary operational disputes into statutory-rights disputes.

That's my first concern: this bill elevates snow removal from a service into a legal entitlement. Snow removal is important, but I would hesitate to characterize it as a human right.

And if we do raise it to that level, what remedies are appropriate if a landlord or a tenant falls short? Are we comfortable turning "bad plow job" into the kind of claim that belongs next to self-help evictions, utility shutoffs, and wrongful entry?

Second, this bill is likely to have spillover effects in slip-and-fall litigation by creating a statutory presumption of duty. There might be legitimate value in clarifying duty under the law, but if that is the legislature's intent, it should do so with clear guardrails. HB 1112 provides no standard of care, no timeline, and no performance benchmark. This means that the statute may establish duty but leaves all operational considerations to after-the-fact tort litigation.

Third, the bill uses a definition of "common areas" that is based on use, not ownership or control. That is manageable when we're talking about a driveway you own. It becomes a liability trap when the residential tenancy includes things like offsite parking leased from a third party.

Many landlords provide parking as an accessory residential use, and this sometimes entails leasing spaces in a nearby lot. Those areas are "used by multiple tenants," but they may not be owned by the landlord, and snow removal may be performed by the third-party owner or its contractor. Under this bill, we risk assigning duty to the landlord in a place where the landlord may not control performance. That is exactly the kind of ambiguity that sounds minor in drafting and becomes major in court.

Fourth, I want to focus on a single word that looks benign but is not: **"voluntary."**
The bill says the tenant may perform snow removal only if the agreement is "express, voluntary, and included in the lease."

"Express" and "included in the lease" are administrable. "Voluntary" is not.

Residential leases frequently function as adhesion contracts. Even when tenants have meaningful choice in where they live, they rarely negotiate line-item operational responsibilities. So what does "voluntary" mean in this context? Does it invite litigation over whether a tenant truly had bargaining power?

Finally, even if we assume perfect drafting, the bill does not address real-world operability problems. Snow removal often requires cooperation. For example, if a landlord is responsible for plowing but a tenant refuses to move their vehicle, is the landlord required to achieve the outcome anyway? Are we now arguing about whether the landlord had to hand-shovel around a car in order to satisfy a statutory duty?

The bill does not answer these questions, and because it is housed in an enforcement-oriented chapter, it invites the least charitable interpretations when conflicts arise.

In short: I understand the common-sense premise. But HB 1112 sets a statutory floor at the level of ideal lease drafting, and it does so in a way that risks escalating routine operational expectations into statutory-rights disputes, expanding liability arguments, and creating ambiguity in certain contexts, even while it seeks to eliminate it.

For these reasons, I respectfully urge the committee to find HB 1112 **Inexpedient to Legislate**.

Thank you for your time, and I'm happy to answer any questions.

Respectfully submitted,

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