

ITL: HB 1143 – Relative to the remediation of mold in rental housing.

Position: Opposition (ITL)

Bill Summary:

This bill adds “significant infestation of mold” to the minimum standards for rental housing under RSA 48-A:14 and authorizes municipal officers to inspect, investigate, and enforce remediation orders for significant mold conditions, including mold detected in hidden areas through “professional instrumentation.”

Key Points:

- RSA 48-A:14 is a per se violation framework; adding mold without definitions creates an enforceable mandate with no intelligible standard.
- “Significant infestation” is undefined, inviting inconsistent enforcement and litigation in a statute backed by daily penalties.
- The “professional instrumentation” language creates hidden-condition liability with no rules for who tests, what tools count, what thresholds apply, or what evidence is sufficient.
- The bill effectively imposes strict liability without a reasonableness, causation, or control framework, including for tenant-caused moisture/ventilation problems.
- Expands municipal enforcement authority without procedural guardrails proportionate to the seriousness and cost of potential remediation.
- Predictable result: defensive vacancy, over-remediation, unit withdrawal, especially for older housing stock.

Full Testimony

Mr. Chair, Members of the Committee—

My name is Christopher Freeman. I am a New Hampshire housing provider. I appear today to oppose **HB 1143** on legal and structural grounds.

This bill would insert “significant infestation of mold” into RSA 48-A:14, transforming mold from a routine maintenance issue into a minimum-standards violation, enforceable through municipal action and daily penalties. As drafted, the bill creates vague compliance

obligations without defining standards, evidentiary thresholds, or procedural safeguards. This raises serious concerns for interpretation and due process.

I. The bill creates an enforceable minimum-standards violation without defining the standard

RSA 48-A is not advisory. A condition listed in RSA 48-A constitutes a regulatory violation. HB 1143 adds:

“There is a **significant infestation of mold...**”

The bill does not define:

- “significant”
- “infestation”
- acceptable background environmental levels
- actionable species or concentrations
- health-based exposure thresholds

In a statute enforced through continuing daily offenses, undefined qualitative terms are liability trap. They delegate core legislative judgments to individual enforcement officers and courts on an ad hoc basis.

II. Hidden-condition liability based on “professional instrumentation” is legally fraught

The most consequential clause authorizes violations where mold “...can be detected behind walls, under carpets, or in other areas not immediately visible.”

This provision allows enforcement based on conditions that:

- Are not observable
- May not affect habitability
- May be historical, dormant, or benign
- May exist in virtually all older structures

The bill does not specify:

- Who determines when testing is warranted
- Who selects or qualifies the “professional”
- What instruments are acceptable
- What readings constitute a violation
- Whether baseline environmental mold is excluded
- Whether confirmatory testing is required

In practice, this authorizes standardless discretion, which is problematic where the consequence is a continuing statutory violation.

III. The bill imposes strict liability without a reasonableness or causation framework

Minimum standards enforcement under RSA 48-A does not hinge on negligence, fault, or intent. Once a condition exists, the violation exists.

HB 1143 contains:

- No knowledge requirement
- No opportunity-to-cure safe harbor
- No causation analysis
- No distinction between owner-caused and tenant-caused conditions

As a result, liability may attach regardless of:

- Tenant behavior (e.g., failure to ventilate)
- Prompt remedial action
- The absence of moisture intrusion
- The absence of health effects

This converts mold into an outcome-based compliance condition, not a conduct-based obligation. New Hampshire law generally disfavors strict liability in the absence of clear legislative intent. No such intent is articulated here.

IV. Enforcement authority is expanded without procedural safeguards

The bill authorizes municipal officers to:

- Inspect
- Investigate
- Issue remediation orders
- Enforce violations under RSA 48-A

Yet the statute provides:

- No inspection protocols
- No evidentiary standards
- No requirement for written findings
- No proportionality limits on remediation
- No process for challenging the scope of ordered remediation

Given that RSA 48-A violations may accrue daily penalties, the absence of procedural guardrails creates substantial due-process risk.

And, speaking as a property owner who has rented to mycophobic tenants, this is rather anxiety provoking when enforcement may depend on invasive testing, expert interpretation, or demolition-level intervention.

V. The bill's structure will predictably reduce housing supply

From a legal-economic perspective, statutes that impose:

- Undefined technical standards
- Hidden-condition liability
- Consultant-driven enforcement
- Daily penalties

...create incentives for **defensive vacancy and withdrawal of housing**, particularly for older buildings and small providers.

This bill will disproportionately impact:

- Historic structures
- Stone and masonry foundations, especially in locations where there is a high water table
- Older multifamily housing
- Rural and legacy stock

The predictable legal response will be over-remediation, unit removal, or abandonment — not improved public health outcomes.

VI. Threshold issues that must be resolved before such a regime could be considered

Before the legislature can responsibly regulate mold as a minimum-standards violation, it must address, at minimum:

- A health-based definition of actionable mold
- Objective detection and measurement standards
- Limits on hidden-condition enforcement
- A causation and control framework
- A reasonableness or safe-harbor provision
- Procedural protections proportionate to the penalties imposed

None of these appear in HB 1143.

Conclusion

HB 1143 does not merely clarify landlord obligations. It creates a new, undefined regulatory violation enforceable through punitive mechanisms, without the legal infrastructure necessary to administer it fairly or consistently.

For these reasons, I respectfully urge the committee to find **HB 1143 Inexpedient to Legislate.**

Respectfully submitted,

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