Statement of
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on H 7004, The Rhode Island Climate Superfund Act of 2026
Submitted for the Record
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Introduction

My name is Thomas Gibson. I live in Newport, Rhode Island, where I serve on the boards of several nonprofits that share a common challenge: dealing with the impacts of climate change. I am pleased to submit this testimony in strong support of **House Bill 7004, The Rhode Island Climate Superfund Act of 2026**. This testimony reflects my experience from four decades of involvement in environmental policy issues at the federal, state, and local levels, including service as Chief of Staff of the US Environmental Protection Agency and as Counsel and Deputy Chief of Staff on the US Senate Environment and Public Works Committee for the Chairman, the late Senator John H. Chafee. The views expressed are my own and do not represent those of any organization or group.

The Problem Facing State and Local Governments

The impacts and costs of climate change in Rhode Island are already considerable and accelerating. The climate-induced phenomena of sea level rise and extreme weather events are readily apparent in coastal communities like Newport, where several neighborhoods now regularly experience clear-day flooding. Storm events that were once anomalies have become the new normal. And while climate-related impacts are not just felt on the coast, coastal cities like Newport are on the front lines where fixed, often aging, infrastructure is directly exposed to the double threat of sea level rise and extreme weather events.

The City of Newport is working to address the threat posed by climate change. Newporters approved a $98.5 million bond issue in 2024, more than half of which will be devoted to projects to make Newport more resilient to the impacts of climate change and sea level rise. Planned projects include repairing the seawall at Perotti Park, relocating critical public safety infrastructure out of a zone that floods regularly, and protecting a drinking water reservoir behind Easton's Beach, among other projects. At King Park, a $2.4 million grant from the Rhode Island Infrastructure Bank will replace a failing seawall with a more resilient structure, including an expanded beach to absorb storm surges better. Elsewhere, repeated failures along Newport's most visited tourist attraction, the Cliff Walk, have been attributed to severe weather, with repair costs estimated at $22 million to be paid from various city and federal funding sources.

This is just a down payment. The backlog of basic infrastructure needs in Newport alone is estimated at over $500 million, much of it at risk from sea level rise and storm events. Newport is also home to several state-owned flagship assets, including Fort Adams State Park, Brenton

Point State Park, and State Pier 9. These state-owned assets already have large maintenance backlogs due to damage from climate change.

The Comprehensive Environmental Response, Compensation, and Liability Act of 1980

The local costs of climate change are staggering, and it is fair to ask who should bear them. In the 1970s, after a series of environmental disasters stemming from improper hazardous-waste disposal, society faced a similar question: who should pay for cleanup? The answer then was that "the polluter should pay," and Congress passed the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, known as either "CERCLA" or, more popularly, "Superfund." Polluters paid in two ways: through a tax on certain chemical and petroleum products to fund cleanups generally, and through a powerful liability system to raise funds among responsible parties at specific sites where they had disposed of, or arranged for the disposal of, hazardous substances. Liability was strict (without fault), retroactive, and joint and several. This liability scheme, including its retroactive reach, was often challenged in federal courts, including the US Supreme Court, and has been repeatedly recognized as lawful.

CERCLA's Flaws, Reform Efforts & Fair Share Allocation

Superfund spawned decades of litigation at nearly every site. EPA would sue the largest responsible parties—the "deep pockets"; they, in turn, would sue smaller parties. At some contaminated sites, CERCLA could, and did, reach the point of large companies suing individuals who might have sold a few car batteries to a metal recycler. Throughout the 1990s, I was involved in efforts to reform CERCLA. I served as Counsel to the US Senate Environment and Public Works Committee, under Chairman John H. Chafee, negotiating with other Senate offices, federal agencies, and countless stakeholders. While we could never agree on issues like cleanup standards, there was a broadly supported consensus, including large corporate responsible parties, to replace Superfund's litigation machine with a system of fair share allocation. Each responsible party would have its proportional liability share determined by an arbitrator in an allocation, not through litigation. It would have been a significant improvement to CERCLA, but it was a casualty of other issues that halted those reform attempts.

H 7004 Requires Polluters To Pay While Avoiding CERCLA's Flaws

Now, 46 years after CERCLA, we face a similar public policy question: who should pay for the public costs attributable to the emissions that cause climate change? In the era when the now-familiar landmark federal environmental bills became law decades ago, we could have expected the US Congress to address such an important policy issue. Unfortunately, those days have long passed. With a few minor exceptions, major environmental statutes — the Clean Air Act, the Clean Water Act, and CERCLA — have not undergone meaningful change since the 1990s. These laws are frozen in time and do not reflect the enormous changes in our understanding of the environment since the laws were enacted. Climate change was barely on Washington policymakers' radar in that era. Over the last three decades, Congress has been unable to pass any significant climate change legislation. Quite the contrary, efforts on comprehensive climate bills failed spectacularly during both the Clinton and Obama Administrations. This has left it to the states to fill the void on climate change. This federal void is why the "Climate Superfund"

concept is gaining traction in many states; Vermont and New York have passed legislation similar to H 7004, and more states are considering such legislation.

The term "Superfund" can be scary, given its origins and legacy as a reaction to catastrophes like Love Canal. And while H 7004 shares its "polluter pays" principle with the original CERCLA, H 7004 is not at all the same as the reviled 1980s-era CERCLA litigation machine. In fact, the bill adopts the proportional allocation-based approach that gained broad support during the CERCLA reform efforts. The bill establishes several one-time processes: tabulation of costs incurred by the state and municipalities, identification of the finite set of responsible parties, and a proportional allocation of those costs among them. This simplicity is attained because H 7407 avoids several CERCLA features that spawned endless litigation. First, the universe of responsible parties is finite, unlike CERCLA's open-ended definition that encouraged responsible parties to sue anyone remotely connected to a site for contribution. Second, the only recoverable costs are climate change response costs borne by the state or municipalities during the defined period from the start of 2000 through the end of 2025. Unlike CERCLA, a responsible party's proportionate fair share of liability is determined in a one-time allocation. Since there is no private right of action, CERCLA's interminable litigation is avoided.

That is not to say H 7004 will not be challenged should it become law. Opponents will make any number of claims that it is inconsistent with law. Many of these same claims were made against the original CERCLA, whose retroactive liability scheme was repeatedly upheld. Opponents will invoke Constitutional claims, such as federal supremacy, arguing that the Clean Air Act already "occupies the field" and leaves no room for state legislation. There are answers to all of these objections, and Rhode Island will have other states as allies in those fights should H 7004 become law. Fear that the law will be challenged should not dissuade you from acting.

Conclusion

The State of Rhode Island and its communities face unaffordable costs from accumulated damage to public property caused by climate change. The public policy question before you is who should pay—Rhode Island taxpayers alone, or the largest companies that have benefited for decades from the extraction and refining of fossil fuels? Clearly, the responsible parties who profited should help pay for the damage to public property caused by climate change. Based on my decades of experience in Washington policy debates, no federal legislation to address climate change liability for past costs or to put a price on carbon prospectively is forthcoming. In the modern era of environmental law, the initiative and leadership will have to come from state governments. I urge this committee to report H 7004 favorably and for the General Assembly to make it law in 2026.

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