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January 29, 2026

VIA EMAIL ONLY

Chairperson Carol Hagan McEntee
House Judiciary Committee
Rhode Island House of Representatives
State House
82 Smith Street
Providence, RI 02903
(rep-mcentee@rilegislature.gov)

**Re: Opposition to 2026 H 7215 (Governmental Tort Liability / Elimination of
Proprietary-Function Protection)**

Dear Chairperson McEntee:

I am writing both individually and as the President of the Rhode Island Association for Justice to respectfully urge the House Judiciary Committee to **reject 2026 H 7215**, which would (a) impose a **\$100,000 cap** on tort damages against the State and municipalities except for willful/malicious conduct or extreme recklessness, and (b) **exempt** the State, cities, towns, and fire districts from **Rhode Island's prejudgment interest statute (§ 9-21-10)**.

This bill would meaningfully weaken the protections Rhode Islanders currently have when they are injured by governmental entities engaged in activities that are **functionally the same as private-sector operations**—the very circumstances in which Rhode Island law has long recognized that full accountability is appropriate.

DECOF, MEGA & QUINN, P.C.

Chairperson Carol Hagan McEntee
House Judiciary Committee
Rhode Island House of Representatives
January 29, 2026
Page 2

The proprietary-function exclusion: why it exists and why it matters.

1) The Tort Claims Act was enacted to make government liable like a private party – within defined limits

Rhode Island's Tort Claims Act was enacted in 1970. The foundational premise of § 9-31-1 is that the State and its political subdivisions are "liable in all actions of tort in the same manner as a private individual or corporation," subject to monetary limitations.

2) The proprietary-function concept is the law's mechanism for identifying "housekeeping/business-like" activities that should not receive special protection

The Rhode Island Supreme Court has explained the key distinction in plain terms: many governmental activities "could not and would not...be performed by a private person at all," but when government is acting like an ordinary landowner or business operator, it should be treated like one. *O'Brien v. State*, 555 A.2d 334, 336-37 (R.I. 1989).

The Court also articulated the functional test that underlies the proprietary-function analysis:

"We inquire whether this is an activity that a private person or corporation would be likely to carry out. If the answer is affirmative, then liability will attach." *Johnson Equities Associates, LP v. Town of Johnston*, 277 A.3d 716, 741 (R.I. 2022).

3) The proprietary-function exclusion is embedded directly in the statutory damages-cap scheme

Current Rhode Island law caps damages at \$100,000 in tort actions against cities/towns/fire districts **but expressly provides that the cap does not apply** when the municipality "was engaged in a **proprietary function** in the commission of the tort."

DECOF, MEGA & QUINN, P.C.

Chairperson Carol Hagan McEntee
House Judiciary Committee
Rhode Island House of Representatives
January 29, 2026
Page 3

The Rhode Island Supreme Court has repeatedly applied this framework and identified examples of proprietary functions, including but not limited to the:

- **Maintaining a transportation authority** (proprietary)
- **Street sweeping** (proprietary)
- **Furnishing water** (proprietary)

In *Housing Authority v. Oropeza*, the Court held:

“[T]he providing of security within and by the housing authority, is proprietary in nature.” 713 A.2d 1262, 1264 (R.I. 1998)

What H 7215 would change – and why it would harm Rhode Islanders

A. H 7215 effectively eliminates the proprietary-function exclusion from the damages cap

H 7215 amends §§ 9-31-2 and 9-31-3 so that the \$100,000 cap becomes the rule, with an exception only for “willful **and** malicious conduct, or extreme recklessness,” rather than the longstanding proprietary-function exception.

That change would dramatically reduce recoveries in exactly the kinds of cases where Rhode Island courts have recognized that the government is operating like a private entity (parks, beaches, transit, fee-based facilities, etc.). In severe-injury cases, **\$100,000 is often nowhere near enough** to cover medical care, future treatment, lost earning capacity, home modifications, or long-term disability needs. Equally unfair, the proposed legislation would limit damages for a death in the amount of \$100,000.00.

B. H 7215 would also strip prejudgment interest protections from claims against government entities

H 7215 explicitly provides that the State and municipalities “shall not be subject to the provisions of § 9-21-10.”

DECOF, MEGA & QUINN, P.C.

Chairperson Carol Hagan McEntee
House Judiciary Committee
Rhode Island House of Representatives
January 29, 2026
Page 4

This removes a major tool that promotes **timely resolution** and discourages delay. The Rhode Island Supreme Court has recognized that interest statutes are meant to drive settlement: *Andrade* notes that “the purpose of the prejudgment interest statute is to accelerate the settlement of claims.” *Andrade v. State*, 448 A.2d 1293, 1297 (R.I. 1982).

Removing prejudgment interest from these cases would give government defendants and their insurers less incentive to resolve valid claims promptly – while injured Rhode Islanders are left waiting.

Bottom Line

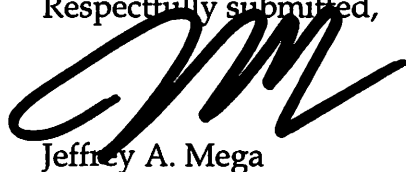
The existing statutory structure reflects a careful balance: Rhode Island law limits damages in many governmental contexts, but it also preserves full accountability when government is acting in a proprietary, business-like role – precisely where private entities would face full liability.

H 7215 would undo that balance by (1) collapsing proprietary-function accountability into a narrow willful/extreme-recklessness category, and (2) stripping prejudgment interest incentives that help cases resolve sooner. The predictable result is **less accountability, longer delays, and greater harm to Rhode Islanders who are seriously injured through municipal/state negligence.**

For these reasons, I respectfully urge the committee to **oppose H 7215.**

Thank you for your time and consideration.

Respectfully submitted,



Jeffrey A. Mega

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