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*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.

**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."

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."

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

JAM/tvb