

By the Committee on Judiciary and Senator Grant

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A bill to be entitled
An act relating to government; creating the
"Citizen Participation in Government Act" and
providing for its purposes; providing
procedures for the judiciary in responding to
lawsuits relating to the constitutional right
to petition the government for redress of
grievances; defining terms; providing an
effective date.

WHEREAS, the framers of our constitutions, recognizing
citizen participation in government as an inalienable right
essential to the survival of democracy, secured its protection
through the right to petition the government for redress of
grievances in the First Amendment to the U.S. Constitution and
Section 5 of Article I of the State Constitution, and

WHEREAS, the communications, information, opinions,
reports, testimony, claims, and arguments provided by citizens
to their government are essential to wise government decisions
and public policy in protecting the public health, safety, and
welfare, in providing effective law enforcement, and in
ensuring the efficient operation of government programs, and
are essential to the credibility and trust afforded government
and the preservation of our republican form of government
through representative democracy, and

WHEREAS, civil lawsuits and counterclaims, often
involving millions of dollars, have been and are being filed
against countless citizens, businesses, and organizations
because of their valid exercise of their right to petition,
including seeking relief, influencing action, informing,

1 communicating, and otherwise participating with government
2 bodies, officials, or employees or the electorate, and

3 WHEREAS, such lawsuits, called "Strategic Lawsuits
4 Against Public Participation" or "SLAPPs," are typically
5 dismissed as unconstitutional, but often not before the
6 defendants are put to great expense, harassment, and
7 interruption of their duties, and

8 WHEREAS, the number of such lawsuits has increased
9 significantly over the past 30 years, and

10 WHEREAS, these lawsuits are an abuse of the judicial
11 process and are used to censor, intimidate, or punish
12 citizens, businesses, and organizations for involving
13 themselves in public affairs, and

14 WHEREAS, controlling these lawsuits will make a major
15 contribution to lawsuit reform, and

16 WHEREAS, the threat of financial liability, litigation
17 costs, destruction of one's business, loss of one's home, and
18 other personal losses from groundless lawsuits seriously
19 affects government, commerce, and individual rights by
20 significantly diminishing public participation in government,
21 in public discourse, and in voluntary public service, and

22 WHEREAS, while courts have recognized the harm from
23 such lawsuits and have discouraged them, protection of these
24 fundamental rights has been inadequate, and

25 WHEREAS, while some citizen communications to
26 government inevitably will be false or unsound or made out of
27 self interest or in bad faith, it is essential in our
28 democracy that the constitutional rights of citizens to
29 participate fully in the process of government be uniformly,
30 consistently, and comprehensively protected and encouraged,
31 NOW, THEREFORE,

1 Be It Enacted by the Legislature of the State of Florida:

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3 Section 1. Short title.--This act may be cited as the
4 "Citizen Participation in Government Act."

5 Section 2. Declaration of purposes.--The purposes of
6 this act are to:

7 (1) Protect and encourage citizen participation in
8 government to the maximum extent permitted by law;

9 (2) Create a more equitable balance between the rights
10 of persons to file lawsuits and to trial by jury and the
11 rights of persons to petition, speak out, associate, and
12 otherwise participate in their governments;

13 (3) Support the operations of and assure the
14 continuation of representative government in this country for
15 the protection and regulation of public health, safety, and
16 welfare by protecting public participation in government
17 programs and public policy decisions;

18 (4) Establish a balanced, uniform, comprehensive
19 process for speedy adjudication of "Strategic Lawsuits Against
20 Public Participation" as a major contribution to lawsuit
21 reform; and

22 (5) Provide for attorney's fees, costs, and damages
23 for persons whose citizen participation rights have been
24 violated by the filing of a "Strategic Lawsuit Against Public
25 Participation" against them.

26 Section 3. Definitions.--As used in this act, the
27 term:

28 (1) "Government" means a branch, department, agency,
29 instrumentality, official, employee, agent, or other person
30 acting under color of law of the United States, a state, or
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1 subdivision of a state or other public authority, including
2 the electorate.

3 (2) "State" means a state, the District of Columbia,
4 the Commonwealth of Puerto Rico, and each territory and
5 possession of the United States.

6 (3) "Judicial claim" or "claim" means any lawsuit,
7 cause of action, claim, cross-claim, counterclaim, or other
8 judicial pleading or filing requesting relief.

9 (4) "Motion" means any motion to dismiss, for summary
10 judgment, for judgment on the pleadings, to strike, demurrer,
11 or any other judicial pleading filed to dispose of a judicial
12 claim.

13 (5) "Moving party" means any person on whose behalf
14 the motion provided in section 4 is filed seeking dismissal of
15 the judicial claim.

16 (6) "Petitioning Activity" means the lawful exercise
17 of the constitutional right to petition, including seeking
18 relief, influencing action, informing, communicating, and
19 otherwise participating in the processes of government.

20 (7) "Responding party" means any person against whom
21 the motion provided in section 4 is filed.

22 Section 4. In any judicial proceeding, a party may
23 file a motion to dispose of a claim brought by any
24 governmental entity on the grounds that the claim is based on,
25 relates to, or is in response to the moving party's lawful
26 petitioning activity. On the filing of such a motion:

27 (1) The motion must be treated as one for summary
28 judgment in which:

29 (a) The trial court uses a time period appropriate to
30 preferred or expedited motions; and

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1 (b) The moving party has a right of expedited appeal
2 from a trial court order denying such a motion or from a trial
3 court's failure to rule on such a motion in expedited fashion;

4 (2) Discovery is suspended, pending decision on the
5 motion and appeals;

6 (3) The responding party has the burden of proof, of
7 going forward with the evidence, and of persuasion on the
8 motion;

9 (4) The court must make its determination based upon
10 the facts contained in the pleadings and affidavits filed;

11 (5) The court must grant the motion and dismiss the
12 judicial claim, unless the responding party has produced clear
13 and convincing evidence that:

14 (a) The claims made in the petitioning activity were
15 devoid of reasonable factual support or lacked a cognizable
16 basis in law;

17 (b) The primary purpose of the petitioning activity
18 was to harass the responding party or for some other improper
19 purpose; and

20 (c) The petitioning activity caused actual injury to
21 the responding party;

22 (6) Any government body to which the moving party's
23 acts were directed or the Attorney General may intervene to
24 defend or otherwise support the moving party in the suit;

25 (7) If the court grants any motion under this section,
26 the court must award to the moving party, without regard to
27 any limits under state law:

28 (a) Costs of litigation, including reasonable
29 attorney's fees and expert witness fees incurred in connection
30 with the motion; and

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1 **(b) Such additional sanctions upon the responding**
2 **party, its attorneys, or law firms as it finds will be**
3 **sufficient to deter repetition of such conduct and comparable**
4 **conduct by others similarly situated; and**

5 **(8) A person damaged or injured by reason of a claim**
6 **filed in violation of his or her rights to engage in**
7 **petitioning activity may seek relief in the form of a claim**
8 **for actual or compensatory damages, as well as punitive**
9 **damages, attorney's fees, and costs from the person or persons**
10 **responsible.**

11 Section 5. This act shall take effect upon becoming a
12 law.

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14 STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN
15 COMMITTEE SUBSTITUTE FOR
16 Senate Bill 272

17 The Committee Substitute for Senate Bill 272:

- 18 - limits application of the bill to actions brought by any
19 governmental entity;
 - 20 - deletes the provision for immunity for an act in
21 furtherance of the constitutional right to petition;
 - 22 - substitutes for this immunity a standard for use by a
23 court in determining whether to grant a motion to dismiss
24 a claim; and
 - 25 - makes technical changes to re-arrange some sections of
26 the bill and to define "petitioning activity."
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