

Bill No. CS for SB 306

Amendment No. 1

| <u>Senate</u> | CHAMBER ACTION | <u>House</u> |
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The Committee on Governmental Oversight and Productivity recommended the following amendment:

**Senate Amendment (with title amendment)**

Delete everything after the enacting clause

and insert:

Section 1. Section 768.29, Florida Statutes, is created to read:

768.29 Strategic Lawsuits Against Public Participation (SLAPP) suits by governmental entities prohibited.--

(1) This section may be cited as the "Citizen Participation in Government Act."

(2) It is the intent of the Legislature to protect the right of Florida's citizens to exercise their rights to peacefully assemble, instruct their representatives, and petition for redress of grievances before the various governmental entities of this state as protected by the First Amendment to the United States Constitution and Art. I, Section 5 of the State Constitution. The Legislature recognizes that "Strategic Lawsuits Against Public

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1 Participation" or "SLAPP" suits, as they are typically called,  
2 have increased over the last 30 years and are mostly filed by  
3 private industry and individuals. However, it is the public  
4 policy of this state that government entities not engage in  
5 SLAPP suits because such actions are inconsistent with the  
6 right of individuals to participate in the state's  
7 institutions of government. Therefore, the Legislature finds  
8 and declares that prohibiting such lawsuits by governmental  
9 entities will preserve this fundamental state policy, preserve  
10 the constitutional rights of Florida citizens, and assure the  
11 continuation of representative government in this state. It  
12 is the intent of the Legislature that such lawsuits be  
13 expeditiously disposed of by the courts.

14 (3) As used in this section, "governmental entity" or  
15 "government entity" means the state, including the executive,  
16 legislative, and the judicial branches of government and the  
17 independent establishments of the state, counties,  
18 municipalities, corporations primarily acting as  
19 instrumentalities of the state, counties, or municipalities,  
20 districts, authorities, boards, commissions, or any agencies  
21 thereof.

22 (4) No governmental entity in this state shall file or  
23 cause to be filed, through its employees or agents, any  
24 lawsuit, cause of action, claim, cross-claim, or counterclaim  
25 against a person or entity without merit and solely because  
26 such person or entity has exercised the right to peacefully  
27 assemble, the right to instruct representatives, and the right  
28 to petition for redress of grievances before the various  
29 governmental entities of this state, as protected by the First  
30 Amendment to the United States Constitution and Art. I,  
31 section 5 of the State Constitution.

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1           (5) A person or entity sued by a governmental entity  
2 in violation of this section has a right to an expeditious  
3 resolution of a claim that the suit is in violation of this  
4 section. A person or entity may petition the court for an  
5 order dismissing the action or granting final judgment in  
6 favor of that person or entity. The petitioner may file a  
7 motion for summary judgment, together with supplemental  
8 affidavits, seeking a determination that the governmental  
9 entity's lawsuit has been brought in violation of this  
10 section. The governmental entity shall thereafter file its  
11 response and any supplemental affidavits. As soon as  
12 practicable, the court shall set a hearing on the petitioner's  
13 motion, which shall be held at the earliest possible time  
14 after the filing of the governmental entity's response. The  
15 court may award, subject to the limitations in s. 768.28, the  
16 party sued by a governmental entity actual damages arising  
17 from the governmental entity's violation of this act. The  
18 court shall award the prevailing party reasonable attorney's  
19 fees and costs incurred in connection with a claim that an  
20 action was filed in violation of this section.

21           (6) In any case filed by a governmental entity which  
22 is found by a court to be in violation of this section, the  
23 governmental entity shall report such finding and provide a  
24 copy of the court's order to the Attorney General no later  
25 than 30 days after such order is final. The Attorney General  
26 shall report any violation of this section by a governmental  
27 entity to the Cabinet, and the President of the Senate, and  
28 the Speaker of the House of Representatives. A copy of such  
29 report shall be provided to the affected governmental entity.

30           Section 2. This act shall take effect upon becoming a  
31 law.

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1 ===== T I T L E A M E N D M E N T =====

2 And the title is amended as follows:

3 Delete everything before the enacting clause

4

5 and insert:

6 A bill to be entitled

7 An act relating to government; creating the  
8 "Citizen Participation in Government Act";  
9 creating s. 768.29, F.S.; providing legislative  
10 intent; defining terms; prohibiting SLAPP  
11 lawsuits by governmental entities because  
12 persons or entities exercise certain  
13 constitutional rights; providing procedures for  
14 expediting resolution of motions regarding  
15 SLAPP suits; authorizing court to award actual  
16 damages, including costs and attorney's fees;  
17 requiring reporting of SLAPP suits to Attorney  
18 General and reporting of violations to certain  
19 state officers; providing an effective date.

20

21 WHEREAS, the framers of our constitutions, recognizing  
22 citizen participation in government as an inalienable right  
23 essential to the survival of democracy, secured its protection  
24 through the right to petition the government for redress of  
25 grievances in the First Amendment to the United States  
26 Constitution and s. 5, Art. I of the State Constitution, and

27 WHEREAS, the communications, information, opinions,  
28 reports, testimony, claims, and arguments provided by citizens  
29 to their government are essential to wise government decisions  
30 and public policy in protecting the public health, safety, and  
31 welfare, in providing effective law enforcement, and in

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1 ensuring the efficient operation of government programs, and  
2 are essential to the credibility and trust afforded government  
3 and the preservation of our republican form of government  
4 through representative democracy, and

5 WHEREAS, civil lawsuits and counterclaims, often  
6 involving millions of dollars, have been and are being filed  
7 against countless citizens, businesses, and organizations  
8 because of their valid exercise of their right to petition,  
9 including seeking relief, influencing action, informing,  
10 communicating, and otherwise participating with government  
11 bodies, officials, or employees or the electorate, and

12 WHEREAS, such lawsuits, called "Strategic Lawsuits  
13 Against Public Participation" or "SLAPPs," are typically  
14 dismissed as unconstitutional, but often not before the  
15 defendants are put to great expense, harassment, and  
16 interruption of their duties, and

17 WHEREAS, the number of such lawsuits has increased  
18 significantly over the past 30 years, and

19 WHEREAS, these lawsuits are an abuse of the judicial  
20 process and are used to censor, intimidate, or punish  
21 citizens, businesses, and organizations for involving  
22 themselves in public affairs, and

23 WHEREAS, controlling these lawsuits will make a major  
24 contribution to lawsuit reform, and

25 WHEREAS, the threat of financial liability, litigation  
26 costs, destruction of one's business, loss of one's home, and  
27 other personal losses from groundless lawsuits seriously  
28 affects government, commerce, and individual rights by  
29 significantly diminishing public participation in government,  
30 in public discourse, and in voluntary public service, and

31 WHEREAS, while courts have recognized the harm from

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1 such lawsuits and have discouraged them, protection of these  
2 fundamental rights has been inadequate, and

3 WHEREAS, while some citizen communications to  
4 government inevitably will be false or unsound or made out of  
5 self-interest or in bad faith, it is essential in our  
6 democracy that the constitutional rights of citizens to  
7 participate fully in the process of government be uniformly,  
8 consistently, and comprehensively protected and encouraged,  
9 NOW, THEREFORE,

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