

By Senator Lee

23-335-00

See HB 135

1                                   A bill to be entitled  
2           An act relating to government; creating the  
3           "Citizen Participation in Government Act";  
4           providing for its purposes; defining terms;  
5           providing procedures for the judiciary to  
6           respond to lawsuits relating to the  
7           constitutional right to petition the government  
8           for redress of grievances; providing an  
9           effective date.

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11           WHEREAS, the framers of our constitutions, recognizing  
12   citizen participation in government as an inalienable right  
13   essential to the survival of democracy, secured its protection  
14   through the right to petition the government for redress of  
15   grievances in the First Amendment to the United States  
16   Constitution and s. 5, Art. I of the State Constitution, and

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

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

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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 public 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.

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 entity" means the state, or any  
29 political subdivision of the state, including, but not limited  
30 to, a county, municipality, district, or authority, or any  
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1 agency thereof, however styled, that independently exercises  
2 governmental authority.

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, motion for  
10 summary judgment, motion for judgment on the pleadings, motion  
11 to strike, demurrer, or any other judicial pleading filed to  
12 dispose of a judicial 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 governmental entity  
21 against whom the motion provided for 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) Discovery is suspended, pending decision on the  
28 motion and appeals.

29 (2) The responding party has the burden of proof, of  
30 going forward with the evidence, and of persuasion on the  
31 motion.

1           (3) The court must make its determination based upon  
2 the facts contained in the pleadings and affidavits filed.

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

6           (a) The claims made in the petitioning activity were  
7 devoid of reasonable factual support or lacked a cognizable  
8 basis in law.

9           (b) The primary purpose of the petitioning activity  
10 was to harass the responding party or for some other improper  
11 purpose.

12           (c) The petitioning activity caused actual injury to  
13 the responding party.

14           (5) Any government body to which the moving party's  
15 acts were directed or the Attorney General may intervene to  
16 defend or otherwise support the moving party in the suit.

17           (6) If the court grants any motion under this section,  
18 the court must award to the moving party, without regard to  
19 any limits under state law:

20           (a) Costs of litigation, including reasonable  
21 attorney's fees and expert witness fees incurred in connection  
22 with the motion.

23           (b) Such additional sanctions upon the responding  
24 party, its attorneys, or law firms as it finds will be  
25 sufficient to deter repetition of such conduct and comparable  
26 conduct by others similarly situated.

27           (7) A person damaged or injured by reason of a claim  
28 filed in violation of his or her rights to engage in  
29 petitioning activity may seek relief in the form of a claim  
30 for actual or compensatory damages, as well as punitive  
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1 damages, attorney's fees, and costs from the governmental  
2 entity responsible.

3 Section 5. This act shall take effect upon becoming a  
4 law.

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7 HOUSE SUMMARY

8  
9 Creates the "Citizen Participation in Government Act."  
10 Provides procedures for the judiciary to handle lawsuits  
11 dealing with the right to petition government. See bill  
12 for details.  
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