

By the Committee on Judiciary and Senators Lee and Grant

308-671-00

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; any political
29 subdivision of the state, including, but not limited to, a
30 county, municipality, district, or authority, or any agency
31 thereof, however styled, that independently exercises

1 governmental authority; an agency of the state; or a regional
2 or a local government created by the State Constitution or by
3 general or special act.

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

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

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

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

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

21 (7) "Responding party" means any governmental entity
22 against whom the motion provided for in section 4 is filed.

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

28 (1) Discovery is suspended, except discovery related
29 to the motion and approved by the court, pending decision on
30 the motion and appeals.

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

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

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

9 (a) The petitioning activity was not expression
10 protected by law;

11 (b) A purpose of the petitioning activity was to
12 harass the responding party or for some other improper
13 purpose;

14 (c) The petitioning activity caused actual injury to
15 the responding party; or

16 (d) The responding party's claim was justified based
17 upon facts or circumstances unrelated to the moving party's
18 petitioning activity.

19 (5) Any governmental entity to which the moving
20 party's acts were directed or the Attorney General may
21 intervene to defend or otherwise support the moving party in
22 the suit.

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

26 (a) Costs of litigation, including reasonable
27 attorney's fees and expert witness fees incurred in connection
28 with the motion.

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

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

9 Section 5. This act shall take effect upon becoming a
10 law.

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12 STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN
13 COMMITTEE SUBSTITUTE FOR
14 SB 306

15 The committee substitute broadens the definition of
16 governmental entity to include agencies of the state and
17 regional and local government entities created by the
18 constitution as well as by general or special act.

19 The committee substitute authorizes discovery related to a
20 motion to dispose of a claim when that discovery is approved
21 by the court.

22 In order for the responding party to have a motion dismissed,
23 the committee substitute requires that at least one of the
24 following must be shown by clear and convincing evidence:

- 25 1. The petitioning activity of the moving party was not
26 protected expression;
- 27 2. A purpose of the petitioning activity was to harass the
28 responding party or for some other improper purpose;
- 29 3. The petitioning activity caused actual injury to the
30 responding party; or
- 31 4. The responding party's claim was justified based upon
facts or circumstances unrelated to the moving party's
petitioning activity.