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1 A bill to be entitled

2 An act relating to strategic lawsuits against public
3 participation; amending s. 768.295, F.S.; revising
4 legislative intent; providing definitions; expanding
5 the prohibition against the filing of SLAPP suits to
6 private individuals and businesses as well as
7 governmental entities; authorizing a special motion to
8 dismiss, motion for judgment on the pleadings, and
9 motion for summary judgment for expedited disposition
10 of SLAPP suits; shifting the burden of proof;
11 providing immunity from civil liability for acts in
12 furtherance of the constitutional right to petition;
13 providing for award of attorney fees and court costs
14 and additional damages; limiting punitive and other
15 damages; providing construction; providing an
16 effective date.

17
18 WHEREAS, citizen participation in government is an
19 inalienable right essential to the survival of democracy and is
20 protected through the right to petition government for redress
21 of grievances in the First Amendment to the United States
22 Constitution and s. 5, Art. I of the State Constitution, and

23 WHEREAS, communications, information, opinions, reports,
24 testimony, claims, and arguments provided by citizens to their
25 government are essential to sound government decisions; to
26 protect the public health, safety, and welfare; to provide
27 effective law enforcement; to ensure efficient operation of
28 governmental programs; to maintain credibility and trust in

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29 government; and to preserve our republican form of government
30 through representative democracy, and

31 WHEREAS, there has been an increase in the number of civil
32 lawsuits, called Strategic Lawsuits Against Public Participation
33 or "SLAPP" suits, filed in recent years against citizens,
34 businesses, and organizations because of their valid exercise of
35 rights to petition government, to speak freely, to associate
36 freely, and to otherwise participate in and communicate with
37 government, and

38 WHEREAS, governmental entities and homeowner associations
39 are prohibited from filing such lawsuits; however, private
40 individuals and industry have been and are filing lawsuits,
41 often involving millions of dollars, for the purpose of
42 censoring, intimidating, or punishing citizens, businesses, and
43 organizations for involving themselves in public affairs, and

44 WHEREAS, such lawsuits are typically dismissed as
45 unconstitutional but often not before the defendants have been
46 put to great expense, harassment, and annoyance, and

47 WHEREAS, these lawsuits are an abuse of the judicial
48 process, and

49 WHEREAS, the threat of financial liability, litigation
50 costs, loss of business, loss of property, and other personal
51 losses resulting from groundless lawsuits seriously affects
52 government, commerce, and individual rights by significantly
53 diminishing public participation in government, and public
54 discourse, and

55 WHEREAS, while some citizen communications to government
56 will inevitably be false or unsound or made out of self-interest

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57 | or in bad faith, it is essential in our democracy that the
 58 | constitutional rights of citizens to participate fully in the
 59 | process of government be protected and encouraged, and

60 | WHEREAS, the threat of SLAPPs significantly chills and
 61 | diminishes citizen participation in government, voluntary public
 62 | service, and the exercise of fundamental constitutional rights,
 63 | NOW, THEREFORE,

64 |

65 | Be It Enacted by the Legislature of the State of Florida:

66 |

67 | Section 1. Section 768.295, Florida Statutes, is amended
 68 | to read:

69 | 768.295 Strategic Lawsuits Against Public Participation
 70 | (SLAPP) suits; special motions to dismiss; immunity; damages and
 71 | attorney fees by governmental entities prohibited.—

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

74 | (2) It is the intent of the Legislature to protect the
 75 | right of Florida's citizens to exercise their rights to
 76 | peacefully assemble, instruct their representatives, and
 77 | petition for redress of grievances before the various
 78 | governmental entities of this state as protected by the First
 79 | Amendment to the United States Constitution and s. 5, Art. I of
 80 | the State Constitution. The Legislature recognizes that
 81 | "Strategic Lawsuits Against Public Participation" or "SLAPP"
 82 | suits, as they are typically called, have been used by
 83 | governmental entities, private industry, and individuals in an
 84 | effort to interfere with the right of citizens to participate in

85 this state's institutions of government and that such efforts
 86 violate the public policy of this state to encourage citizen
 87 participation in government and to protect the fundamental
 88 rights of all citizens ~~have increased over the last 30 years and~~
 89 ~~are mostly filed by private industry and individuals. However,~~
 90 ~~it is the public policy of this state that government entities~~
 91 ~~not engage in SLAPP suits because such actions are inconsistent~~
 92 ~~with the right of individuals to participate in the state's~~
 93 ~~institutions of government.~~ Therefore, the Legislature finds and
 94 declares that prohibiting such lawsuits ~~by governmental entities~~
 95 will preserve this fundamental state policy, preserve the
 96 constitutional rights of Florida citizens, and ensure ~~assure~~ the
 97 continuation of representative government in this state. It is
 98 the intent of the Legislature that such lawsuits be
 99 expeditiously disposed of by the courts and that citizens who
 100 act in furtherance of their constitutional right to petition,
 101 including seeking relief, influencing action, informing or
 102 communicating with the public at large, and otherwise
 103 participating in the processes of government, shall be immune
 104 from civil liability for such acts, regardless of their intent
 105 or purpose, except when not aimed at procuring governmental or
 106 electoral action, result, or outcome.

- 107 (3) As used in this section, the term:
 108 (a) "Business" means a limited liability company,
 109 partnership, general partnership, limited partnership, limited
 110 liability partnership, joint venture, or any other entity
 111 created, formed, or established, either formally or informally,
 112 for the purpose of conducting business or any commercial

113 activity.

114 (b) "Claim" means any lawsuit, cause of action, claim,
 115 cross-claim, counterclaim, or any other judicial or
 116 administrative pleading or filing requesting relief.

117 (c) "Communication" means any statement, claim, allegation
 118 in a proceeding, decision, protest, writing, argument,
 119 contention, or other expression.

120 (d) "Governmental entity" or "government entity" means the
 121 state, including the executive, legislative, and ~~the~~ judicial
 122 branches of government and the independent establishments of the
 123 state, counties, municipalities, corporations primarily acting
 124 as instrumentalities of the state, counties, or municipalities,
 125 districts, authorities, boards, commissions, or any agencies
 126 thereof.

127 (e) "Individual" means a natural person.

128 (f) "Motion" means any motion to dismiss, for summary
 129 judgment, for judgment on the pleadings, or to strike or any
 130 other judicial or administrative pleading or filing to dispose
 131 of a claim.

132 (g) "Moving party" means any party to a judicial or
 133 administrative proceeding on whose behalf a motion is filed
 134 seeking disposition of a claim.

135 (h) "Person" means an individual, corporation,
 136 association, organization, trust, or trustee, two or more
 137 persons having a joint or common interest, or any other legal
 138 entity.

139 (i) "Processes of government" means the mechanisms and
 140 procedures by which the legislative and executive branches of

141 government make decisions and the activities leading up to the
 142 decisions.

143 (j) "Responding party" means any party to a judicial or
 144 administrative proceeding against whom a motion is filed seeking
 145 disposition of a claim.

146 (k) "SLAPP suit" means a claim, counterclaim, cross-claim,
 147 or other action seeking relief from a judicial or administrative
 148 agency which is brought against a party who has communicated
 149 with a federal, state, or local governmental body or the public
 150 at large to report on, comment on, challenge, oppose, or in any
 151 other way exercise rights under the First Amendment to the
 152 United States Constitution or s. 5, Art. I of the State
 153 Constitution regarding any matter within the authority of any
 154 governmental body or the electorate.

155 (4) A person, business, individual, or ~~no~~ governmental
 156 entity in this state ~~may not shall~~ file or cause to be filed in
 157 this state, through its employees or agents, any lawsuit, cause
 158 of action, claim, cross-claim, or counterclaim against a person
 159 or entity without merit and solely because such person or entity
 160 has exercised the right to peacefully assemble, the right to
 161 instruct representatives, and the right to petition for redress
 162 of grievances before the various governmental entities of this
 163 state, as protected by the First Amendment to the United States
 164 Constitution and s. 5, Art. I of the State Constitution.

165 (5) Any act in furtherance of the constitutional right to
 166 petition, including seeking relief, influencing action,
 167 informing or communicating with the public at large, and
 168 otherwise participating in the processes of government, is

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169 immune from civil liability, regardless of its intent or
170 purpose, unless the act is not aimed at procuring any
171 governmental or electoral action, result, or outcome.

172 (6) (5) A person or entity sued by a governmental entity in
173 violation of this section has a right to an expeditious
174 resolution of a claim that the suit is in violation of this
175 section. A person or entity may petition the court for an order
176 dismissing the action or granting final judgment in favor of
177 that person or entity by filing a special motion to dismiss
178 within the period provided for responding to the claim or, in
179 the court's discretion, at any later time upon terms the court
180 deems proper or by filing a motion for judgment on the pleadings
181 or. The petitioner may file a motion for summary judgment,
182 together with supplemental affidavits, seeking a determination
183 that the governmental entity's lawsuit has been brought in
184 violation of this section. The governmental entity shall
185 thereafter file its response and any supplemental affidavits. As
186 soon as practicable, the court shall set a hearing on the
187 petitioner's motion, which shall be held at the earliest
188 possible time after the filing of the governmental entity's
189 response. The court may award, subject to the limitations in s.
190 768.28, the party sued by a governmental entity actual damages
191 arising from the governmental entity's violation of this act.
192 The court shall award the prevailing party reasonable attorney's
193 fees and costs incurred in connection with a claim that an
194 action was filed in violation of this section.

195 (a) A special motion to dismiss authorized by this section
196 shall be granted if the moving party has asserted that the

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197 action, claim, cross-claim, or counterclaim subject to the
198 motion is an action involving public petition and public
199 participation in the processes of government unless the
200 responding party demonstrates by clear and convincing evidence
201 that the acts of the moving party are not immunized from or are
202 not in furtherance of acts immunized from liability by this
203 section and that the cause of action has a substantial basis in
204 law or is supported by a substantial argument for an extension,
205 modification, or reversal of existing law. The special motion to
206 dismiss shall be heard and decided by the court within 90 days
207 after the filing of the motion. An appellate court shall
208 expedite any appeal or petition for a writ, whether
209 interlocutory or not, from a trial court order denying the
210 motion or from a trial court's failure to rule on the motion
211 within 90 days.

212 (b) A motion for judgment on the pleadings or for summary
213 judgment in which the moving party has demonstrated by
214 affidavits or matters of record that the action, claim, cross-
215 claim, or counterclaim subject to the motion is an action
216 involving public petition and participation in processes of
217 government shall be granted unless the party responding to the
218 motion demonstrates that the action, claim, cross-claim, or
219 counterclaim has a substantial basis in fact and in law or is
220 supported by a substantial argument for an extension,
221 modification, or reversal of existing law. The court shall grant
222 preference in scheduling the hearing of the motion for judgment
223 on the pleadings or motion for summary judgment.

224 (c) Any government body to which the moving party's acts

225 were directed or the Attorney General may intervene to defend or
 226 otherwise support the moving party in the hearing of any motion
 227 authorized in this section.

228 (d) All discovery and further proceedings shall
 229 automatically be stayed by the filing of any motion authorized
 230 by this section until after the motion is disposed of by the
 231 court.

232 (e) The court shall award a moving party who prevails in a
 233 motion under this section reasonable attorney fees and costs
 234 incurred and may award other compensatory damages upon an
 235 additional demonstration that the action was commenced or
 236 continued for the purpose of harassing, intimidating, punishing,
 237 or otherwise interfering with public participation in the
 238 processes of government or inhibiting the free exercise of
 239 rights granted under the First Amendment to the United States
 240 Constitution or s. 5, Art. I of the State Constitution. Punitive
 241 damages may be recovered only upon a demonstration that the
 242 action was commenced or continued for the sole purpose of
 243 harassing, intimidating, punishing, or otherwise interfering
 244 with public participation in the processes of government or
 245 inhibiting the free exercise of rights granted under the First
 246 Amendment to the United States Constitution or s. 5, Art. I of
 247 the State Constitution.

248 (f) Damages may be awarded to a plaintiff in an action
 249 involving public petition and participation in the processes of
 250 government only if the plaintiff, in addition to all other
 251 necessary elements, establishes by clear and convincing evidence
 252 that any communication giving rise to the action was made with

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253 | knowledge of its falsity or with reckless disregard of whether
254 | it was false and where the truth or falsity of such
255 | communication is material to the cause of action at issue.

256 | (7)~~(6)~~ In any case filed by a governmental entity which is
257 | found by a court to be in violation of this section, the
258 | governmental entity shall report such finding and provide a copy
259 | of the court's order to the Attorney General no later than 30
260 | days after such order is final. The Attorney General shall
261 | report any violation of this section by a governmental entity to
262 | the Cabinet, the President of the Senate, and the Speaker of the
263 | House of Representatives. A copy of such report shall be
264 | provided to the affected governmental entity.

265 | (8) This section does not limit any constitutional,
266 | statutory, or common law protection to defendants to actions
267 | involving public petition and participation.

268 | Section 2. This act shall take effect July 1, 2012.