

By Senator Braynon

33-01315-12

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1 A bill to be entitled
 2 An act relating to growth management; amending s.
 3 163.3181, F.S.; prohibiting a government or
 4 governmental entity or an applicant for a plan
 5 amendment or development order from filing any SLAPP
 6 suit, lawsuit, cause of action, claim, cross-claim, or
 7 counterclaim because such person or entity has
 8 participated in the comprehensive planning process;
 9 providing definitions; providing immunity from civil
 10 liability for acts in furtherance of the
 11 constitutional right to petition; authorizing a
 12 special motion to dismiss, motion for judgment on the
 13 pleadings of, and motion for summary judgment for
 14 expedited disposition of certain suits; providing for
 15 award of attorney fees and court costs and additional
 16 damages; limiting punitive and other damages;
 17 providing construction; providing an effective date.

18
 19 Be It Enacted by the Legislature of the State of Florida:

20
 21 Section 1. Subsection (5) is added to section 163.3181,
 22 Florida Statutes, to read:

23 163.3181 Public participation in the comprehensive planning
 24 process; intent; alternative dispute resolution.—

25 (5) A government, a governmental entity, or an applicant
 26 for a plan amendment or development order may not file or cause
 27 to be filed any SLAPP suit, lawsuit, cause of action, claim,
 28 cross-claim, or counterclaim against a person or entity without
 29 merit and solely because such person or entity has participated

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30 in the comprehensive planning process by exercising the right to
31 peacefully assemble, the right to instruct representatives, and
32 the right to petition for redress of grievances before the
33 various governmental entities of this state, as protected by the
34 First Amendment to the United States Constitution and s. 5, Art.
35 I of the State Constitution.

36 (a) As used in this section, the term:

37 1. "Comprehensive planning process" means the mechanisms
38 and procedures by which the executive and legislative branches
39 of government make comprehensive planning decisions and the
40 activities leading up to those decisions.

41 2. "Government" or "governmental entity" means the state,
42 including the executive, legislative, and judicial branches of
43 state government and the independent entities of the state; a
44 county; a municipality; a corporation primarily acting as an
45 instrumentality of the state, a county, or a municipality; a
46 district; or an authority, board, commission, or agency of any
47 of the foregoing.

48 3. "Motion" means any motion to dismiss for summary
49 judgment or for judgment on the pleadings, any motion to strike
50 a claim, or any other judicial or administrative pleading or
51 filing to dispose of a claim.

52 4. "Moving party" means any party to a judicial or
53 administrative proceeding on whose behalf a motion is filed
54 seeking disposition of a claim.

55 5. "Person" means any individual, corporation, association,
56 organization, trust, or trustee; two or more persons having a
57 joint or common interest; or any other legal entity.

58 6. "Responding party" means any party to a judicial or

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59 administrative proceeding against whom a motion is filed seeking
60 disposition of a claim.

61 7. "SLAPP suit" means a claim, counterclaim, cross-claim,
62 or other action seeking relief from a judicial or administrative
63 agency which is brought against a party who has communicated
64 with a federal, state, or local government body or the public at
65 large to report on, comment on, challenge, oppose, or in any
66 other way exercise rights under the First Amendment to the
67 United States Constitution or s. 5, Art. I of the State
68 Constitution regarding any matter within the authority of any
69 government body or the electorate.

70 (b) Any act in furtherance of the constitutional right to
71 petition, including seeking relief, influencing action,
72 informing or communicating with the public at large, and
73 otherwise participating in the comprehensive planning process,
74 is immune from civil liability, regardless of its intent or
75 purpose, unless the act is not aimed at procuring any
76 governmental or electoral action, result, or outcome in the
77 comprehensive planning process. Any civil or administrative suit
78 or motion seeking financial damages or sanctions against any
79 person or organization based in whole or in part upon oral or
80 written statements made during advocacy for or against a
81 proposed comprehensive plan amendment, land development
82 regulation amendment, or development order shall be sworn to by
83 the movant and shall be pleaded with particularity and identify
84 the specific facts that allegedly give rise to liability.

85 (c) A person or entity sued based upon any oral or written
86 statements made during advocacy for or against a proposed
87 comprehensive plan amendment, land development regulation

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88 amendment, or development order has a right to an expeditious
89 resolution of a claim that the suit is in violation of this
90 section. A person or entity may petition the court for an order
91 dismissing the action or granting final judgment in favor of the
92 person or entity by filing a special motion to dismiss within
93 the time period provided for responding to the claim or, in the
94 court's discretion, at any later time upon terms the court deems
95 proper or by filing a motion for judgment on the pleadings or a
96 motion for summary judgment, together with supplemental
97 affidavits, seeking a determination that the lawsuit has been
98 brought in violation of this section.

99 (d) A special motion to dismiss authorized by this section
100 shall be granted if the moving party has asserted that the
101 action, claim, cross-claim, or counterclaim subject to the
102 motion is an action involving public petition and public
103 participation in the comprehensive planning, land development
104 regulation, or development order process unless the responding
105 party demonstrates by clear and convincing evidence that the
106 acts of the moving party are not immunized from or are not in
107 furtherance of acts immunized from liability by this section and
108 that the cause of action has a substantial basis in law or is
109 supported by a substantial argument for an extension,
110 modification, or reversal of existing law. The special motion to
111 dismiss shall be heard and decided by the court within 90 days
112 after the filing of the motion. An appellate court shall
113 expedite any appeal or petition for a writ, whether
114 interlocutory or not, from a trial court order denying the
115 motion or from a trial court's failure to rule on the motion
116 within 90 days.

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117 (e) A motion for judgment on the pleadings or for summary
118 judgment in which the moving party has demonstrated by
119 affidavits or matters of record that the action, claim, cross-
120 claim, or counterclaim subject to the motion is an action
121 involving public petition and participation in the comprehensive
122 planning process shall be granted unless the party responding to
123 the motion demonstrates that the action, claim, cross-claim, or
124 counterclaim has a substantial basis in fact and in law or is
125 supported by a substantial argument for an extension,
126 modification, or reversal of existing law. The court shall grant
127 preference in scheduling the hearing of the motion for judgment
128 on the pleadings or motion for summary judgment.

129 (f) Any governmental body to which the moving party's acts
130 were directed may intervene to defend or support the moving
131 party in the hearing of any motion authorized in this section.

132 (g) All discovery and further proceedings shall
133 automatically be stayed by the filing of any motion authorized
134 by this section until after the motion is disposed of by the
135 court.

136 (h) The court shall award a moving party who prevails in a
137 motion under this section reasonable attorney fees and costs
138 incurred and may award other compensatory damages upon an
139 additional demonstration that the action was commenced or
140 continued for the purpose of harassing, intimidating, punishing,
141 or otherwise interfering with public participation in the
142 comprehensive planning process or inhibiting the free exercise
143 of rights granted under the First Amendment to the United States
144 Constitution or s. 5, Art. I of the State Constitution. Punitive
145 damages may be recovered only upon a demonstration that the

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146 action was commenced or continued for the sole purpose of
147 harassing, intimidating, punishing, or otherwise interfering
148 with public participation in the comprehensive planning process
149 or inhibiting the free exercise of rights granted under the
150 First Amendment to the United States Constitution or s. 5, Art.
151 I of the State Constitution.

152 (i) Damages may be awarded to a plaintiff in an action
153 involving public petition and participation in the comprehensive
154 planning process only if the plaintiff, in addition to all other
155 necessary elements, establishes by clear and convincing evidence
156 that any communication giving rise to the action was made with
157 knowledge of its falsity or with reckless disregard of whether
158 it was false and where the truth or falsity of such
159 communication is material to the cause of action at issue.

160 (j) This section may not be construed to limit any other
161 constitutional, statutory, or common law protection to
162 defendants to actions involving public petition and
163 participation.

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