

# HOUSE BILL REPORT

## SSB 6395

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### As Reported by House Committee On: Judiciary

**Title:** An act relating to lawsuits aimed at chilling the valid exercise of the constitutional rights of speech and petition.

**Brief Description:** Addressing lawsuits aimed at chilling the valid exercise of the constitutional rights of speech and petition.

**Sponsors:** Senate Committee on Judiciary (originally sponsored by Senators Kline, Kauffman and Kohl-Welles).

#### **Brief History:**

##### **Committee Activity:**

Judiciary: 2/18/10, 2/22/10 [DP].

#### **Brief Summary of Substitute Bill**

- Allows a party to bring a special motion to strike any claim that is based on an action involving public participation and petition.
- Provides that a party who prevails on a special motion to strike will be awarded costs of litigation, reasonable attorneys' fees, and \$10,000.

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### HOUSE COMMITTEE ON JUDICIARY

**Majority Report:** Do pass. Signed by 10 members: Representatives Pedersen, Chair; Goodman, Vice Chair; Rodne, Ranking Minority Member; Shea, Assistant Ranking Minority Member; Kelley, Kirby, Ormsby, Roberts, Ross and Warnick.

**Staff:** Brian Kilgore (786-7119) and Edie Adams (786-7180).

#### **Background:**

The First Amendment to the United States Constitutional provides the right "to petition the government for a redress of grievances." The right to petition covers any peaceful, legal attempt to promote or discourage governmental action at any level and in any branch. All means of expressing views to government are protected, including: filing complaints,

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reporting violations of law, testifying, writing letters, lobbying, circulating petitions, protesting, and boycotting.

Strategic lawsuits against public participation (SLAPPs) are initiated against people who speak out about a matter of public concern. Typically, the party who institutes a SLAPP claims damages for defamation, or interference with a business relationship, resulting from a communication made by a person or group to the government.

The U.S. Supreme Court has held that a dismissal of a SLAPP should be granted in all cases except where the target's activities are not genuinely aimed at procuring favorable government action. However, a SLAPP can result in years of litigation and substantial expense before it is dismissed.

Washington law addresses the use of SLAPPs by creating immunity from civil liability for people who communicate a complaint or other information to an agency of the federal, state, or local government, or to a self-regulatory organization that has been delegated authority by a government agency. The anti-SLAPP statute entitles a person who prevails against a SLAPP to expenses, reasonable attorney's fees, and statutory damages of \$10,000. Successfully dismissing a suit under the anti-SLAPP statute can take a year or longer. If the trial court decision is appealed, receiving final judgment can take two or three years.

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### **Summary of Bill:**

An "action involving public participation and petition" is defined as including any oral statement made, or written statement submitted:

- to a legislative, executive, judicial, or other governmental proceeding authorized by law;
- in connection with an issue under consideration by a legislative, executive, judicial, or other governmental proceeding authorized by law;
- that is reasonably likely to encourage or enlist public participation in an effort to effect the consideration of an issue by a legislative, executive, judicial, or other proceeding authorized by law; or
- in a place open to the public or a public forum in connection with an issue of public concern.

An "action involving public participation and petition" also includes any other lawful action in furtherance of the exercise of the constitutional rights of free speech or petition.

Within 60 days of service of a complaint, or as a court determines, a party may bring a special motion to strike any claim that is based on an action involving public participation and petition. The court is directed to hold a hearing on the special motion with all due speed and to render its decision no later than seven days after the hearing is held. The moving party has the initial burden of showing by a preponderance of the evidence that the claim is based on an action involving public participation and petition. If the moving party meets this burden, the burden shifts to the responding party to establish by clear and convincing evidence a probability of prevailing on the claim.

A moving party who prevails, in whole or in part, on a special motion to strike any claim that is based on an action involving public participation and petition will be awarded costs of litigation, reasonable attorneys' fees, and \$10,000. The court may award additional relief such as sanctions upon the responding party and its attorneys. If the court finds that the special motion to strike a claim is frivolous or was intended to cause unnecessary delay, it must award costs of litigation, reasonable attorneys' fees, and an amount of \$10,000 to the responding party.

Every party has a right of expedited appeal from a trial court order on the special motion, or from a trial court's failure to rule on the motion in a timely fashion.

The act shall be construed liberally to effectuate its general purpose of protecting participants in public controversies from abusive use of the courts.

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**Appropriation:** None.

**Fiscal Note:** Not requested.

**Effective Date:** The bill takes effect 90 days after adjournment of the session in which the bill is passed.

**Staff Summary of Public Testimony:**

(In support) The SLAPP suits use the courts to suppress speech. The bill is aimed at strengthening our current anti-SLAPP law. The existing law is from 1989 and was the first of its kind in the country. It is simple and lacks procedural mechanisms. It is also narrow in focus, applying only to communications with certain government agencies. The bill expands SLAPP protections to the constitutional limit. Anti-SLAPP laws enforce the constitutional rights of petition and free speech, but are not required by the Constitution. The courts are responsible for enforcing these rights and this new legislation would give them an expedited way to do that. Courts need this new tool to quickly recognize and dismiss SLAPPs. Development is one area that frequently results in SLAPPs. For example, a neighborhood association will try to block development the residents feel is objectionable by petitioning elected officials not to approve a permit. The developer sues or just threatens to sue for libel. The suit is groundless but can stifle speech, as discovery costs are ruinous to the average individual. The bill accelerates the dismissal process of these suits so they can be dismissed before discovery. Meritorious complaints are unaffected by this bill. It represents a good balance between protecting citizens in exercising their free speech and petition rights and allowing meritorious claims to proceed.

(Opposed) This bill protects too much speech. Libelous statements should not be protected. Defamation in open public forums should not be allowed. More clarification is needed in how courts will carry forward the process created by the bill.

**Persons Testifying:** (In support) Senator Kline, prime sponsor; Rowland Thompson, Allied Daily Newspapers of Washington; and Bruce Johnson, Davis Wright Tremaine.

(Opposed) Arthur West.

**Persons Signed In To Testify But Not Testifying:** None.