

SENATE BILL REPORT

SB 6395

As Reported by Senate Committee On:
Judiciary, January 20, 2010

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: Senators Kline, Kauffman and Kohl-Welles.

Brief History:

Committee Activity: Judiciary: 1/12/10, 1/19/10, 1/20/10 [DPS].

SENATE COMMITTEE ON JUDICIARY

Majority Report: That Substitute Senate Bill No. 6395 be substituted therefor, and the substitute bill do pass.

Signed by Senators Kline, Chair; Regala, Vice Chair; McCaslin, Ranking Minority Member; Carrell, Gordon, Hargrove, Kohl-Welles and Roach.

Staff: Lidia Mori (786-7755)

Background: Strategic lawsuits against public participation, or SLAPPs, are initiated to intimidate or retaliate against people who speak out about a matter of public concern. Typically, a person who institutes a SLAPP suit claims damages for defamation or interference with a business relationship resulting from a communication made by a person or group to the government or a self-regulatory organization that has been delegated authority by the government. A 2003 Gonzaga law review article describes most SLAPPs as occurring in the commercial context with the lawsuits being filed against people or groups alleging environmental or consumer protection violations.

In 1989 the Legislature addressed the use of SLAPPs by creating immunity from civil liability for people who in good faith communicate a complaint or 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. In 2002 the anti-SLAPP statutes were amended to remove the requirement that the communication be in good faith and to allow statutory damages of \$10,000 to a person who prevails against a lawsuit based on a communication to

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a government agency or organization. The 2002 legislation also included a policy statement recognizing the constitutional threat of SLAPP litigation.

Summary of Bill (Recommended Substitute): The Legislature asserts that it is in the public interest for citizens to participate in matters of public concern and provide information to public entities and other citizens on public issues that affect them without fear of reprisal through abuse of the judicial process. The Legislature affirms its concern regarding lawsuits brought primarily to chill freedom of speech and petition, also known as strategic lawsuits against public participation.

An action involving public participation and petition is defined as including any oral or written statement submitted in connection with an issue under consideration by a legislative, executive, judicial, or other proceeding authorized by law. It also includes any oral or written statement that is reasonably likely to encourage or enlist public participation in the consideration or review of an issue in a legislative, executive, judicial, or other proceeding authorized by law. Any oral or written statement submitted in a public forum in connection with an issue of public concern is also an action involving public participation and petition. Any other lawful conduct in furtherance of the exercise of the constitutional right of free speech in connection with an issue of public concern is also considered to be an act involving public participation and petition.

A procedure is created for the speedy resolution of strategic lawsuits against public participation. The court is directed to hold a hearing with all due speed on any motion to deny a claim based on an action involving public participation and petition and to render its decision no later than seven days after the hearing is held. A person who is successful in pursuing a motion to deny a claim based on an action involving public participation and petition is awarded costs of litigation, reasonable attorneys' fees, and \$10,000. The court may award additional relief such as sanctions upon the moving party and its attorneys if it determines they are necessary to deter repetition of the conduct. If the court finds the motion to deny a claim is frivolous or is intended to cause unnecessary delay, it will award costs of litigation, reasonable attorneys' fees, and an amount of \$10,000.

The general purpose of the law to protect participants in public controversies from an abusive use of the courts is to be applied and construed liberally.

EFFECT OF CHANGES MADE BY JUDICIARY COMMITTEE (Recommended Substitute): The court may award additional relief such as sanctions upon the responding party and its attorneys if it determines they are necessary to deter repetition of the conduct.

Appropriation: None.

Fiscal Note: Not requested.

Committee/Commission/Task Force Created: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony on Original Bill: PRO: Washington was the first state to create a statute addressing strategic lawsuits against public participation. Now we find that Washington is lagging behind other states in the protection afforded to people who engage in free speech and public participation. This bill is designed to inhibit lawsuits that are aimed at preventing public participation and petition. Claims that are valid can go forward in a timely manner but those that are initiated to hamper people who are exercising their right to speak out can be able to be resolved quickly.

Persons Testifying: PRO: Rowland Thompson, Allied Daily Newspaper; Bruce Johnson, law firm of Davis, Wright, Tremaine.