

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Rules

BILL: CS/SB 1312

INTRODUCER: Judiciary Committee and Senator Simmons

SUBJECT: Strategic Lawsuits Against Public Participation

DATE: March 18, 2015

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Wiehle</u>	<u>Cibula</u>	<u>JU</u>	<u>Fav/CS</u>
2.	<u>Wiehle</u>	<u>Phelps</u>	<u>RC</u>	<u>Pre-meeting</u>

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1312 does two things:

- It adds protection of “free speech in connection with public issues” to the statute prohibiting certain strategic lawsuits against public participation (SLAPP), defining the term “free speech in connection with public issues” as any written or oral statement that is protected under applicable law and is made:
 - Before a governmental entity in connection with an issue under consideration or review by a governmental entity, or
 - In connection with the publication of a play, movie broadcast, or other similar work of art.
- It includes a person¹ in the prohibition against bringing a SLAPP suit and in the provisions for expedited resolution of a lawsuit claimed to be a SLAPP suit.

II. Present Situation:

A strategic lawsuit against public participation (SLAPP) is one ostensibly brought to redress a wrong, such as an invasion of privacy, a business tort, or an interference with a contract or an economic advantage, but actually brought to silence one or more critics.² Because of the variety

¹ The word “person” includes individuals, children, firms, associations, joint adventures, partnerships, estates, trusts, business trusts, syndicates, fiduciaries, corporations, and all other groups or combinations. Section 1.01(3), F.S.

² See, e.g., The Florida Senate Committee on Judiciary, Issue Brief 2009-332, Strategic Lawsuits Against Public Participation, October 2008, http://archive.flsenate.gov/data/Publications/2009/Senate/reports/interim_reports/pdf/2009-332ju.pdf; Cornell University Law School, SLAPP suit definition, https://www.law.cornell.edu/wex/slapp_suit; Public

of nominal bases for a SLAPP suit, laws to prevent them, known as anti-SLAPP laws, are phrased in terms of rights to be protected.

Florida's anti-SLAPP statute protects the right of Florida's citizens to exercise their rights to peacefully assemble, instruct their representatives, and petition for redress of grievances before the various governmental entities of this state as protected by the First Amendment to the United States Constitution and s. 5, Article I of the State Constitution.^{3, 4} The SLAPP-suit prohibition applies only to suits brought by government entities.

Specifically, the statute prohibits a governmental entity in this state from filing or causing to be filed, through its employees or agents, any lawsuit, cause of action, claim, cross-claim, or counterclaim against a person or entity without merit and solely because such person or entity has exercised the right to peacefully assemble, the right to instruct representatives, and the right to petition for redress of grievances before the various governmental entities of this state.

The statute also provides a right to an expeditious resolution of a claim that a suit has been filed in violation of this section. The person or entity sued by a governmental entity may petition the court for an order dismissing the action or granting final judgment in favor of that person or entity. As soon as practicable, the court must set a hearing on the petitioner's motion, which must be held at the earliest possible time after the filing of the governmental entity's response. If the petitioner prevails, the court may award actual damages arising from the governmental entity's violation of this act. The court must award the prevailing party reasonable attorney's fees and costs incurred in connection with a claim that an action was filed in violation of this section.

III. Effect of Proposed Changes:

CS/SB 1312 does two things:

- It adds protection of “free speech in connection with public issues” to the anti-SLAPP suit statute, defining the term “free speech in connection with public issues” as any written or oral statement that is protected under applicable law and is made:
 - Before a governmental entity in connection with an issue under consideration or review by a governmental entity, or
 - In connection with a play, movie, television program, radio broadcast, audiovisual work, book, magazine article, musical work, news report, or other similar work.
- It includes a person in the prohibition against bringing a SLAPP suit and in the provisions for expedited resolution of a lawsuit claimed to be a SLAPP suit.

Participation Project, FAQs about SLAPPs, <http://www.anti-slapp.org/slappdash-faqs-about-slapps/>; Strategic Lawsuits against Public Participation, <http://legal-dictionary.thefreedictionary.com/Strategic+Lawsuits+against+Public+Participation>; and Reporters Committee for Freedom of the Press, Anti-SLAPP laws, <http://www.rcfp.org/browse-media-law-resources/digital-journalists-legal-guide/anti-slapp-laws-0>.

³ Section 768.295, F.S., the Citizen Participation in Government Act.

⁴ There are also narrower statutes prohibiting SLAPP suits against a condominium unit owner or a parcel owner within a homeowners' association without merit and solely because such owner has exercised the right to instruct their representatives or the right to petition for redress of grievances before the various governmental entities of this state, as protected by the First Amendment to the United States Constitution and s. 5, Article I of the State Constitution. ss. 718.1224 and 720.304, F.S., respectively. These statutes also provide for expeditious resolution of a claim that the suit is in violation of these sections and prohibit condominium associations or homeowners' associations from expending association funds in prosecuting a SLAPP suit against a property owner.

The bill takes effect July 1, 2015.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Persons and entities may be better protected against the expenses of defending a SLAPP suit.

C. Government Sector Impact:

To the extent that the bill results in quicker, more efficient resolution of SLAPP suits, it may reduce costs to the courts.

VI. Technical Deficiencies:

None.

VII. Related Issues:

Due to the disjunctive structure of the definition of “free speech in connection with public issues,” the bill appears to give additional protections to speech solely because the speech is made through designated forms of media. The bill does not appear to require that speech made through these forms of media relate to a “public issue.” If the Legislature intends to link the speech protections provided in the bill to the discussion of public issues or participation in government, it may wish to revise the bill accordingly.

VIII. Statutes Affected:

This bill substantially amends section 768.295 of the Florida Statutes.

IX. Additional Information:

- A. **Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Judiciary on March 10, 2015:

- Expands the list of types of artistic works contained in the definition of the term “free speech in connection with a public interest”;
- Preserves current law that actual damages are available only in a SLAPP suit filed by a government entity; and
- Makes technical changes.

- B. **Amendments:**

None.