

CERTIFICATION OF ENROLLMENT

SUBSTITUTE SENATE BILL 6395

Chapter 118, Laws of 2010

61st Legislature
2010 Regular Session

PUBLIC PARTICIPATION LAWSUITS--SPECIAL MOTION TO STRIKE CLAIM

EFFECTIVE DATE: 06/10/10

Passed by the Senate February 16, 2010
YEAS 46 NAYS 0

BRAD OWEN

President of the Senate

Passed by the House February 28, 2010
YEAS 96 NAYS 0

FRANK CHOPP

Speaker of the House of Representatives

Approved March 18, 2010, 2:51 p.m.

CHRISTINE GREGOIRE

Governor of the State of Washington

CERTIFICATE

I, Thomas Hoemann, Secretary of the Senate of the State of Washington, do hereby certify that the attached is **SUBSTITUTE SENATE BILL 6395** as passed by the Senate and the House of Representatives on the dates hereon set forth.

THOMAS HOEMANN

Secretary

FILED

March 18, 2010

**Secretary of State
State of Washington**

SUBSTITUTE SENATE BILL 6395

Passed Legislature - 2010 Regular Session

State of Washington 61st Legislature 2010 Regular Session

By Senate Judiciary (originally sponsored by Senators Kline, Kauffman, and Kohl-Welles)

READ FIRST TIME 01/25/10.

1 AN ACT Relating to lawsuits aimed at chilling the valid exercise of
2 the constitutional rights of speech and petition; adding a new section
3 to chapter 4.24 RCW; creating new sections; and prescribing penalties.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

5 NEW SECTION. **Sec. 1.** (1) The legislature finds and declares that:

6 (a) It is concerned about lawsuits brought primarily to chill the
7 valid exercise of the constitutional rights of freedom of speech and
8 petition for the redress of grievances;

9 (b) Such lawsuits, called "Strategic Lawsuits Against Public
10 Participation" or "SLAPPs," are typically dismissed as groundless or
11 unconstitutional, but often not before the defendants are put to great
12 expense, harassment, and interruption of their productive activities;

13 (c) The costs associated with defending such suits can deter
14 individuals and entities from fully exercising their constitutional
15 rights to petition the government and to speak out on public issues;

16 (d) It is in the public interest for citizens to participate in
17 matters of public concern and provide information to public entities
18 and other citizens on public issues that affect them without fear of
19 reprisal through abuse of the judicial process; and

1 (e) An expedited judicial review would avoid the potential for
2 abuse in these cases.

3 (2) The purposes of this act are to:

4 (a) Strike a balance between the rights of persons to file lawsuits
5 and to trial by jury and the rights of persons to participate in
6 matters of public concern;

7 (b) Establish an efficient, uniform, and comprehensive method for
8 speedy adjudication of strategic lawsuits against public participation;
9 and

10 (c) Provide for attorneys' fees, costs, and additional relief where
11 appropriate.

12 NEW SECTION. **Sec. 2.** A new section is added to chapter 4.24 RCW
13 to read as follows:

14 (1) As used in this section:

15 (a) "Claim" includes any lawsuit, cause of action, claim, cross-
16 claim, counterclaim, or other judicial pleading or filing requesting
17 relief;

18 (b) "Government" includes a branch, department, agency,
19 instrumentality, official, employee, agent, or other person acting
20 under color of law of the United States, a state, or subdivision of a
21 state or other public authority;

22 (c) "Moving party" means a person on whose behalf the motion
23 described in subsection (4) of this section is filed seeking dismissal
24 of a claim;

25 (d) "Other governmental proceeding authorized by law" means a
26 proceeding conducted by any board, commission, agency, or other entity
27 created by state, county, or local statute or rule, including any self-
28 regulatory organization that regulates persons involved in the
29 securities or futures business and that has been delegated authority by
30 a federal, state, or local government agency and is subject to
31 oversight by the delegating agency.

32 (e) "Person" means an individual, corporation, business trust,
33 estate, trust, partnership, limited liability company, association,
34 joint venture, or any other legal or commercial entity;

35 (f) "Responding party" means a person against whom the motion
36 described in subsection (4) of this section is filed.

1 (2) This section applies to any claim, however characterized, that
2 is based on an action involving public participation and petition. As
3 used in this section, an "action involving public participation and
4 petition" includes:

5 (a) Any oral statement made, or written statement or other document
6 submitted, in a legislative, executive, or judicial proceeding or other
7 governmental proceeding authorized by law;

8 (b) Any oral statement made, or written statement or other document
9 submitted, in connection with an issue under consideration or review by
10 a legislative, executive, or judicial proceeding or other governmental
11 proceeding authorized by law;

12 (c) Any oral statement made, or written statement or other document
13 submitted, that is reasonably likely to encourage or to enlist public
14 participation in an effort to effect consideration or review of an
15 issue in a legislative, executive, or judicial proceeding or other
16 governmental proceeding authorized by law;

17 (d) Any oral statement made, or written statement or other document
18 submitted, in a place open to the public or a public forum in
19 connection with an issue of public concern; or

20 (e) Any other lawful conduct in furtherance of the exercise of the
21 constitutional right of free speech in connection with an issue of
22 public concern, or in furtherance of the exercise of the constitutional
23 right of petition.

24 (3) This section does not apply to any action brought by the
25 attorney general, prosecuting attorney, or city attorney, acting as a
26 public prosecutor, to enforce laws aimed at public protection.

27 (4)(a) A party may bring a special motion to strike any claim that
28 is based on an action involving public participation and petition, as
29 defined in subsection (2) of this section.

30 (b) A moving party bringing a special motion to strike a claim
31 under this subsection has the initial burden of showing by a
32 preponderance of the evidence that the claim is based on an action
33 involving public participation and petition. If the moving party meets
34 this burden, the burden shifts to the responding party to establish by
35 clear and convincing evidence a probability of prevailing on the claim.
36 If the responding party meets this burden, the court shall deny the
37 motion.

1 (c) In making a determination under (b) of this subsection, the
2 court shall consider pleadings and supporting and opposing affidavits
3 stating the facts upon which the liability or defense is based.

4 (d) If the court determines that the responding party has
5 established a probability of prevailing on the claim:

6 (i) The fact that the determination has been made and the substance
7 of the determination may not be admitted into evidence at any later
8 stage of the case; and

9 (ii) The determination does not affect the burden of proof or
10 standard of proof that is applied in the underlying proceeding.

11 (e) The attorney general's office or any government body to which
12 the moving party's acts were directed may intervene to defend or
13 otherwise support the moving party.

14 (5)(a) The special motion to strike may be filed within sixty days
15 of the service of the most recent complaint or, in the court's
16 discretion, at any later time upon terms it deems proper. A hearing
17 shall be held on the motion not later than thirty days after the
18 service of the motion unless the docket conditions of the court require
19 a later hearing. Notwithstanding this subsection, the court is
20 directed to hold a hearing with all due speed and such hearings should
21 receive priority.

22 (b) The court shall render its decision as soon as possible but no
23 later than seven days after the hearing is held.

24 (c) All discovery and any pending hearings or motions in the action
25 shall be stayed upon the filing of a special motion to strike under
26 subsection (4) of this section. The stay of discovery shall remain in
27 effect until the entry of the order ruling on the motion.
28 Notwithstanding the stay imposed by this subsection, the court, on
29 motion and for good cause shown, may order that specified discovery or
30 other hearings or motions be conducted.

31 (d) Every party has a right of expedited appeal from a trial court
32 order on the special motion or from a trial court's failure to rule on
33 the motion in a timely fashion.

34 (6)(a) The court shall award to a moving party who prevails, in
35 part or in whole, on a special motion to strike made under subsection
36 (4) of this section, without regard to any limits under state law:

37 (i) Costs of litigation and any reasonable attorneys' fees incurred
38 in connection with each motion on which the moving party prevailed;

1 (ii) An amount of ten thousand dollars, not including the costs of
2 litigation and attorney fees; and

3 (iii) Such additional relief, including sanctions upon the
4 responding party and its attorneys or law firms, as the court
5 determines to be necessary to deter repetition of the conduct and
6 comparable conduct by others similarly situated.

7 (b) If the court finds that the special motion to strike is
8 frivolous or is solely intended to cause unnecessary delay, the court
9 shall award to a responding party who prevails, in part or in whole,
10 without regard to any limits under state law:

11 (i) Costs of litigation and any reasonable attorneys' fees incurred
12 in connection with each motion on which the responding party prevailed;

13 (ii) An amount of ten thousand dollars, not including the costs of
14 litigation and attorneys' fees; and

15 (iii) Such additional relief, including sanctions upon the moving
16 party and its attorneys or law firms, as the court determines to be
17 necessary to deter repetition of the conduct and comparable conduct by
18 others similarly situated.

19 (7) Nothing in this section limits or precludes any rights the
20 moving party may have under any other constitutional, statutory, case
21 or common law, or rule provisions.

22 NEW SECTION. **Sec. 3.** This act shall be applied and construed
23 liberally to effectuate its general purpose of protecting participants
24 in public controversies from an abusive use of the courts.

25 NEW SECTION. **Sec. 4.** This act may be cited as the Washington Act
26 Limiting Strategic Lawsuits Against Public Participation.

27 NEW SECTION. **Sec. 5.** If any provision of this act or its
28 application to any person or circumstance is held invalid, the
29 remainder of the act or the application of the provision to other
30 persons or circumstances is not affected.

Passed by the Senate February 16, 2010.

Passed by the House February 28, 2010.

Approved by the Governor March 18, 2010.

Filed in Office of Secretary of State March 18, 2010.