

D R A F T
FOR DISCUSSION ONLY

PUBLIC PARTICIPATION PROTECTION ACT

NATIONAL CONFERENCE OF COMMISSIONERS
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ON UNIFORM STATE LAWS

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PUBLIC PARTICIPATION PROTECTION ACT

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PUBLIC PARTICIPATION PROTECTION ACT

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1 **PUBLIC PARTICIPATION PROTECTION ACT**

2 **Prefatory Note**

3 “Strategic lawsuit against public participation,” or SLAPP, is a term used to describe a
4 specific kind of civil action brought by a plaintiff whose real aim is to silence or intimidate the
5 defendant, or punish the defendant by subjecting it to costly and lengthy litigation. SLAPPs defy
6 simple definition. They can be brought by and against individuals, corporate entities, or
7 government officials across all points of the political or social spectrum. They can address a
8 wide variety of issues from zoning to the environment to politics to education. They are often
9 cloaked as otherwise standard claims of defamation, civil conspiracy, tortious interference,
10 nuisance, and invasion of privacy, just to name a few. But for all the ways in which SLAPPs
11 may clothe themselves, their unifying features make them a dangerous force: They are brought
12 not to remedy civil wrongs, but rather to ensnare their targets in costly litigation that will deter
13 them and others from engaging in constitutionally protected activity such as free speech and
14 petition.

15
16 To limit the detrimental effects these lawsuits can have, 31 states, as well as the District
17 of Columbia and the Territory of Guam, have enacted laws that establish special and expedited
18 procedures to aid defendants in seeking early dismissal of SLAPPs. Though grouped under the
19 “anti-SLAPP” moniker, these statutes vary widely in scope, form, and procedure. For example,
20 some anti-SLAPP laws are triggered by any claim that implicates free speech on a public issue,
21 while others apply only to speech in specific settings or concerning specific subjects. Some
22 statutes provide for special motions to dismiss, while others employ traditional summary
23 judgment procedures. Some stay the discovery process and provide for attorney’s fees and
24 sanctions, while others do not. Two state supreme courts have struck down their states’ laws
25 over concerns that they infringe upon the right to a civil jury trial.

26
27 This degree of variance from state to state—and an absence of protection in at least 19
28 states—leads to confusion and disorder among plaintiffs, defendants, and courts. It also
29 contributes to what can be labeled as “litigation tourism;” that is, a type of forum shopping by
30 which a plaintiff who has choices among the states in which to bring a lawsuit will do so in a
31 state that lacks strong and clear anti-SLAPP protections.

32
33 The Public Participation Protection Act seeks to harmonize these varying approaches by
34 enunciating a clear process through which SLAPPs can be challenged and their merits fairly
35 evaluated in an expedited manner. In doing so, the Act serves the dual purposes of protecting
36 individuals’ rights to petition and speak freely on issues of public interest while, at the same
37 time, protecting the rights of people and entities to file meritorious lawsuits for real injuries.

1 (1) filed on or after [the effective date of this [act]]; and

2 (2) brought against a person based on the person’s conduct or communication:

3 (A) in an official proceeding;

4 (B) on an issue under consideration or review in an official proceeding; or

5 (C) exercising the right of free speech, free association, or petition,

6 guaranteed by the United States Constitution or the [state] Constitution, on a matter of public
7 concern.

8 (c) This [act] does not apply to a cause of action brought:

9 (1) by a governmental entity to enforce a law or regulation to protect against an
10 imminent threat to public health or safety; or

11 (2) by a person primarily engaged in the business of selling or leasing goods or
12 services against a person primarily engaged in the business of selling or leasing goods or
13 services, if the conduct or communication on which the cause of action is based arises out of the
14 sale or lease of goods or services.

15 **SECTION 5. MOTION FOR SUMMARY JUDGMENT.**

16 (a) Not later than [60] days after being served with a [complaint] [petition], crossclaim,
17 counterclaim, or third-party claim that asserts a cause of action to which this [act] applies, or at a
18 later time on a showing of good cause, the person served may file a motion to dispose of the
19 cause of action.

20 (b) Any motion filed under this Section shall be treated as one for summary judgment.

21 **Legislative Note:** *A state should use the term “complaint”, “petition”, or both, to describe any*
22 *procedural means through which a cause of action may be brought. A state should title its*
23 *motion one to “dismiss” or “strike” given its customs and procedures.*

1 **Comments**

2 The terms “complaint” and “petition” are intended to include any amended pleadings that
3 assert a cause of action for the first time in a case.

4
5 **SECTION 6. STAY.**

6 (a) Except as otherwise provided in this section, all proceedings in an action, including
7 discovery and pending hearings or motions, are stayed on the filing of a motion under Section 5.
8 The stay remains in effect until entry of an order ruling on the motion and the conclusion of any
9 appeal of the order or expiration of the time to appeal the order.

10 (b) On a showing by a party that specified information necessary to meet or oppose a
11 burden imposed by Section 9 is not reasonably available without discovery, the court may allow
12 limited discovery for the purpose of obtaining the information.

13 (c) The court for good cause may entertain a motion unrelated to a motion under Section
14 5.

15 (d) A motion for relief under Section 12 or 13 is not subject to the stay under subsection
16 (a).

17 **Comment**

18 This section should not be construed to affect a court’s ability to hear and rule, upon a
19 finding of good cause, on motions for prejudgment remedies.

20
21 **SECTION 7. EXPEDITED HEARING.**

22 (a) The court shall hear a motion under Section 5 not later than [60] days after service of
23 the motion, unless the court orders a later hearing:

- 24 (1) because of the condition of the court’s docket;
25 (2) by agreement of the parties;
26 (3) to allow limited discovery under Section 6(b); or

1 (4) for other good cause.

2 (b) If the court orders a later hearing under subsection (a)(3), the court shall hear the
3 motion under Section 5 not later than [60] days after the court issues a ruling allowing for the
4 discovery.

5 **SECTION 8. [NONSUIT] [DISMISSAL].**

6 (a) A voluntary [nonsuit] [dismissal] without prejudice of a responding party's cause of
7 action does not affect a moving party's right to obtain a ruling on a motion filed under Section 5
8 before the [nonsuit] [dismissal].

9 (b) A voluntary [nonsuit] [dismissal] with prejudice of a responding party's cause of
10 action entitles the moving party to relief under Section 12 on a motion filed under Section 5
11 before the [nonsuit] [dismissal].

12 **Comment**

13 Once a motion under Section 5 has been filed, a voluntary [nonsuit] [dismissal] of the
14 responding party's cause of action does not deprive the court of jurisdiction.

15
16 **SECTION 9. DISMISSAL.** If a moving party establishes that this [act] applies to a
17 cause of action, the court shall dismiss the cause of action with prejudice if:

18 (1) the responding party fails to establish a genuine issue of material fact as to each
19 essential element of the cause of action; or

20 (2) the moving party establishes that it is entitled to judgment as a matter of law.

21 **SECTION 10. RULING.** The court shall decide a motion under Section 5 not later than
22 [60] days after the hearing under Section 7.

23 **SECTION 11. APPEAL.**

24 (a) An order denying, in whole or in part, a motion under Section 5 is immediately
25 appealable [under [the state's interlocutory-appeal statute]].

1 (b) An appellate court shall expedite an appeal, whether interlocutory or not, from a trial
2 court ruling on a motion under Section 5 or [an original action] [a writ] involving the ruling.

3 *Legislative Note: If a state has a statute specifying instances in which an interlocutory appeal is*
4 *permitted, it should cite the statute in this section. This section may require amendment of a*
5 *state's interlocutory appeal statute.*

6
7 **Comment**

8
9 This section should not be construed to foreclose an interlocutory appeal of an order
10 granting, in whole or in part, a motion under Section 5, if state law would otherwise permit such
11 an appeal.

12
13 **SECTION 12. RELIEF FOR SUCCESSFUL MOVING PARTY.** If the moving
14 party prevails on a motion under Section 5, the court shall award the moving party court costs,
15 reasonable attorney's fees, and other reasonable expenses related to the motion.

16 **Comment**

17 The relief provided for by this section includes any court costs, reasonable attorney's
18 fees, and any other reasonable expenses associated with filing a motion under this section.

19
20 **SECTION 13. RELIEF FOR SUCCESSFUL RESPONDING PARTY.** If the
21 responding party prevails on a motion under Section 5 and the court finds that the motion was
22 frivolous or filed solely with the intent to delay the proceedings, the court shall award the
23 responding party court costs, reasonable attorney's fees, and any other reasonable expenses
24 related to the motion.

25 **SECTION 14. UNIFORMITY OF APPLICATION AND CONSTRUCTION.** In
26 applying and construing this uniform act, consideration must be given to the need to promote
27 uniformity of the law with respect to its subject matter among states that enact it.

28 **[SECTION 15. SEVERABILITY.** If any provision of this [act] or its application to
29 any person or circumstance is held invalid, the invalidity does not affect other provisions or
30 applications of this [act] which can be given effect without the invalid provision or application,

1 and to this end the provisions of this [act] are severable.]

2 **Legislative Note:** *Include this section only if this state lacks a general severability statute or a*
3 *decision by the highest court of this state stating a general rule of severability.*

4

5 **[SECTION 16. REPEALS; CONFORMING AMENDMENTS.**

6 (a) . . .

7 (b) . . .

8 (c) . . .]

9 **SECTION 17. EFFECTIVE DATE.** This [act] takes effect . . .