

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

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HOUSE BILL 746

Short Title: Citizen Participation Act. (Public)

Sponsors: Representatives Fisher, Hamilton, Bryant, and Luebke (Primary Sponsors).
For a complete list of Sponsors, see Bill Information on the NCGA Web Site.

Referred to: Judiciary.

April 7, 2011

1 A BILL TO BE ENTITLED
2 AN ACT TO PROTECT THE CONSTITUTIONAL RIGHT OF CITIZENS TO
3 PARTICIPATE IN GOVERNMENT PROCEEDINGS.

4 The General Assembly of North Carolina enacts:

5 **SECTION 1.** The General Statutes are amended by adding a new Chapter to read:

6 **"Chapter 1F.**

7 **"Lawsuits Against Citizen Participation.**

8 **"§ 1F-1. Short title; findings; purpose.**

9 (a) Short Title. – This Chapter shall be known and may be cited as the Citizen
10 Participation Act.

11 (b) Findings. – The General Assembly finds the following:

12 (1) The framers of our Constitutions recognized citizen participation in
13 government as an inalienable right essential to the survival of democracy
14 and secured its protection through the right to petition the government for
15 redress of grievances in the First Amendment to the United States
16 Constitution and Section 12 of Article I of the North Carolina Constitution.

17 (2) The participation of citizens in their government is essential to wise
18 government decisions.

19 (3) Civil lawsuits and counterclaims have been and are being abused to
20 discourage citizens from the valid exercise of their constitutional rights to
21 free speech and to petition and participate with government bodies, officials,
22 or employees.

23 (4) Such lawsuits against public participation are rarely meritorious but burden
24 citizens with great expense, harassment, and interruption of their productive
25 activities.

26 (5) The threat of lawsuits against public participation seriously affects
27 government, commerce, and individual rights by significantly diminishing
28 public participation in government.

29 (6) It is in the public interest to encourage continued participation in matters of
30 public significance and that this participation should not be chilled through
31 abuse of the judicial process.

32 (c) Purpose. – It is the purpose of this Chapter to protect and encourage citizen
33 participation in government to the maximum extent permitted by law; support the operations of
34 representative government by protecting public participation in government programs, public



1 policy decisions, and other actions; establish a balanced, uniform, comprehensive process for
2 speedy adjudication of lawsuits against public participation as a major contribution to lawsuit
3 reform; and provide for attorneys' fees, costs, and damages for persons whose citizen
4 participation rights have been violated by the filing of a lawsuit against public participation
5 against them.

6 **"§ 1F-2. Definitions.**

7 The following definitions apply in this Chapter:

8 (1) Government. – Any of the following:

9 a. A branch, subdivision, department, agency, commission, board,
10 instrumentality, city, county, official, employee, agent, or another
11 person acting under color of law of the United States, the State of
12 North Carolina, or any city, county, or other subdivision of the State.

13 b. Any public authority chartered or otherwise established by the State
14 or by a subdivision of the State.

15 The term 'government' does not include State or federal courts.

16 (2) Government action. – Any project, plan, determination, permit, approval,
17 authorization, decision, enforcement, rule making, legislation, inquiry,
18 investigation, change of policy, or any other step taken by government under
19 color of State or federal law in the furtherance of its duties or
20 responsibilities.

21 (3) Government proceeding. – Any hearing, meeting, formal or informal
22 comment period, contested case under Chapter 150B of the General Statutes,
23 public notice, or other invitation or designated opportunity for public input
24 or participation with government.

25 (4) Judicial claim or claim. – Any lawsuit, cause of action, claim, cross-claim,
26 counterclaim, or other judicial pleading or filing requesting relief.

27 (5) Motion. – A special motion to dismiss under G.S. 1F-4.

28 (6) Moving party. – A person on whose behalf the motion described in
29 G.S. 1F-4 is filed seeking dismissal of a judicial claim.

30 (7) Person. – An individual, corporation, association, organization, partnership,
31 two or more persons having a joint or common interest, or another legal
32 entity.

33 (8) Responding party. – A person against whom the motion described in
34 G.S. 1F-4 is filed.

35 **"§ 1F-3. Immunity for public participation.**

36 The following conduct and speech is immune from civil liability in this State:

37 (1) Any written or oral statement made before a government proceeding.

38 (2) Any written or oral statement made to government in connection with an
39 issue under consideration or review by government or made with the
40 genuine aim, in whole or in part, of procuring a government action or
41 influencing a decision in a government proceeding.

42 (3) Any written or oral statement made to the public or in a public forum
43 relating to an issue of government interest or concern and genuinely aimed
44 in whole or in part at procuring a government action or influencing a
45 decision in a government proceeding.

46 **"§ 1F-4. Special motion to dismiss created.**

47 A judicial claim against a person that could reasonably be construed as based on, relating
48 to, or in response to an immune act under G.S. 1F-3 shall be subject to a special motion to
49 dismiss created under this Chapter. A special motion under this Chapter may be filed within 30
50 days of the service of the judicial claim or, in the court's discretion, at any later time upon terms
51 it deems proper.

"§ 1F-5. Procedure.

(a) A special motion to dismiss under this Chapter may be consolidated with other defenses pursuant to G.S. 1A-1, Rule 12(g). Failure to join other defenses shall not constitute a waiver of any defenses under G.S. 1A-1, Rule 12(h).

(b) The special motion shall be treated as one for summary judgment and shall be scheduled for a hearing not more than 30 days after the service of the motion unless the docket conditions of the court require a later hearing.

(c) Upon the filing of the special motion, discovery shall be suspended, pending a decision on the motion and any appeal from that decision.

(d) The responding party has the burden of proof, of going forward with the evidence, and of persuasion on the special motion.

(e) The Attorney General or the government body to which the conduct or speech for which immunity is claimed under this Chapter was directed shall have an unconditional right of intervention under G.S. 1A-1, Rule 24, to defend or otherwise support the moving party.

(f) The court must make its determination based upon the pleadings and facts contained in any affidavits filed in support of or opposition to the special motion.

(g) The court shall grant the special motion and dismiss the claim unless the responding party has produced clear and convincing evidence that the claim cannot reasonably be construed as based on, relating to, or in response to an immune act under G.S. 1F-3.

(h) A determination by the court in favor of the responding party shall not be admissible into evidence at any later stage of the case, or in any subsequent action, and no burden of proof or degree of proof otherwise applicable shall be affected by that determination in any later stage of the case or in any subsequent proceeding.

(i) The court shall award to a moving party who is dismissed all of the following:

(1) Costs of litigation, including reasonable attorney and expert witness fees, incurred in connection with the motion.

(2) Upon a finding that the responding party brought the judicial claim for the purpose of harassment, to inhibit the moving party's public participation, to interfere with the moving party's exercise of protected constitutional rights, or otherwise wrongfully injure the moving party, additional sanctions upon the responding party and its attorneys as the court determines sufficient to deter repetition of the conduct and comparable conduct by others similarly situated.

(j) The moving party has a right of immediate appeal from a trial court's order denying the motion under this Chapter or from a trial court's failure to rule on the motion in expedited fashion. The court shall stay litigation of all claims in the case pending resolution of the appeal from the motion under this Chapter.

(k) A moving party shall file an answer or other responsive pleading pursuant to G.S. 1A-1, Rule 12, within 30 days after service with the order denying the motion or, if the moving party appeals from such an order, within 30 days after service of the order of the court of appeals affirming that decision.

"§ 1F-6. Miscellaneous.

(a) Nothing in this Chapter limits or precludes rights the moving party may have under other constitutional, statutory, case or common law, or rule provisions.

(b) This Chapter must be construed liberally to fully effectuate its purpose and intent.

(c) This Chapter shall not apply to any enforcement action brought on behalf of the State by the Attorney General, any district attorney, or any county or city attorney acting as a public prosecutor.

(d) This Chapter shall not apply to limit or preclude a legislative or executive body or a public agency or other government entity from enforcing the rules of procedure and rules of order of the body or agency."

1 **SECTION 2.** This act is effective when it becomes law and applies to judicial
2 proceedings initiated on or after that date.