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CL/A

P.L. 2023, CHAPTER 155, *approved September 7, 2023*
Senate, No. 2802 (*First Reprint*)

- 1 AN ACT concerning certain actions and supplementing Title 2A of
2 the New Jersey Statutes.
3
- 4 **BE IT ENACTED** by the Senate and General Assembly of the State
5 of New Jersey:
6
- 7 1. This act shall be known and may be cited as the “Uniform
8 Public Expression Protection Act.”
9
- 10 2. Scope.
11 a. In this section:
12 (1) “Goods or services” does not include the creation,
13 dissemination, exhibition, or advertisement or similar promotion of
14 a dramatic, literary, musical, political, journalistic, or artistic work.
15 (2) “Governmental unit” means a public corporation or
16 government or governmental subdivision, agency, or
17 instrumentality.
18 (3) “Person” means an individual, estate, trust, partnership,
19 business or nonprofit entity, governmental unit, or other legal
20 entity.
21 b. Except as otherwise provided in subsection c., this act applies
22 to a cause of action asserted in a civil action against a person based
23 on the person’s:
24 (1) communication in a legislative, executive, judicial,
25 administrative, or other governmental proceeding;
26 (2) communication on an issue under consideration or review in
27 a legislative, executive, judicial, administrative, or other
28 governmental proceeding; or
29 (3) exercise of the right of freedom of speech or of the press, the
30 right to assembly or petition, or the right of association, guaranteed
31 by the United State Constitution or the New Jersey Constitution, on
32 a matter of public concern.
33 c. This act does not apply to a cause of action asserted:
34 (1) against a governmental unit or an employee or agent of a
35 governmental unit acting or purporting to act in an official capacity;

EXPLANATION – Matter enclosed in bold-faced brackets **[thus]** in the above bill is not enacted and is intended to be omitted in the law.

Matter underlined **thus** is new matter.

Matter enclosed in superscript numerals has been adopted as follows:

¹Senate SBA committee amendments adopted June 27, 2023.

1 (2) by a governmental unit or an employee or agent of a
2 governmental unit acting in an official capacity to enforce a law to
3 protect against an imminent threat to public health or safety; or

4 (3) against a person primarily engaged in the business of selling
5 or leasing goods or services if the cause of action arises out of a
6 communication related to the person's sale or lease of the goods or
7 services.

8
9 3. ~~1~~ **Special Motion for Expedited Relief** Order to Show
10 Cause¹.

11 Not later than 60 days after a party is served with a petition or
12 complaint, crossclaim, counterclaim, third-party claim, or other
13 pleading that asserts a cause of action to which this act applies or at
14 a later time on a showing of good cause, the party may file ~~1~~ **a**
15 **special motion for expedited relief to** an application for an order to
16 show cause with the court to¹ dismiss the cause of action or part of
17 the cause of action.

18
19 4. Stay.

20 a. Except as otherwise provided in subsections d. through g.,
21 ~~1~~ **on** upon¹ the filing of ~~1~~ **a motion** an application for an order to
22 show cause¹ under section 3 of P.L. , c. (C.)(pending before
23 the Legislature as this bill) ~~1~~ **the court may order**¹:

24 (1) all other proceedings between the moving party and
25 responding party, including discovery and a pending hearing or
26 motion ~~1~~ **are** to be¹ stayed ~~1~~ **;** and ~~1~~ **;**¹

27 (2) on motion by the moving party, the court may stay ~~1~~ **a**
28 **hearing or motion** an action or proceeding¹ involving another
29 party, or discovery by another party, if the hearing or ruling ~~1~~ **on**
30 **the motion** in that proceeding¹ would adjudicate, or the discovery
31 would relate to, an issue material to ~~1~~ **the motion** an order to show
32 cause¹ under section 3 of P.L. , c. (C.)(pending before the
33 Legislature as this bill) ~~1~~ **;** and ~~1~~ **;**¹

34 (3) In determining whether to stay any proceedings, there shall
35 be a presumption that such a stay shall be granted¹.

36 b. A stay under subsection a. remains in effect until ~~1~~ **entry of**
37 **an order ruling on the motion under section 3 of P.L. ,**
38 **c. (C.)(pending before the Legislature as this bill) and expiration**
39 **of the time under section 9 of P.L. , c. (C.)(pending before**
40 **the Legislature as this bill) for the moving party to appeal the**
41 **order** lifted by the court¹.

42 c. Except as otherwise provided in subsections e., f. and g., if a
43 party appeals from an order ruling on ~~1~~ **a motion** an order to show
44 cause¹ under section 3 of P.L. , c. (C.)(pending before the
45 Legislature as this bill), all proceedings between all parties in the

1 action ¹are stayed. The stay remains in effect **may be stayed by**
 2 the court¹ until the conclusion of the appeal.

3 d. During a stay under subsection a., the court may allow limited
 4 discovery if a party shows that specific information is necessary to
 5 establish whether a party has satisfied or failed to satisfy a burden
 6 under subsection a. of section 7 of P.L. , c. (C.)(pending
 7 before the Legislature as this bill) and the information is not
 8 reasonably available unless discovery is allowed.

9 e. A motion under section 10 of P.L. , c. (C.)(pending
 10 before the Legislature as this bill) for costs, attorney's fees, and
 11 expenses is not subject to a stay under this section.

12 f. A stay under this section does not affect a party's ability
 13 voluntarily to dismiss a cause of action or party of a cause of action
 14 or move to sever a cause of action.

15 g. **During** If the court issues¹ a stay under this section, the
 16 court for good cause may hear and rule on:

17 (1) a motion unrelated to **the motion** an order to show cause¹
 18 under section 3 of P.L. , c. (C.)(pending before the
 19 Legislature as this bill); and

20 (2) a motion seeking a special or preliminary injunction to
 21 protect against an imminent threat to public health or safety.

22

23 5. Hearing.

24 a. The court shall hear **a motion** an order to show cause¹
 25 under section 3 of P.L. , c. (C.)(pending before the
 26 Legislature as this bill) **not later than 60 days after filing of the**
 27 motion, unless the court orders a later hearing;

28 (1) to allow discovery under subsection d. of section 4 of P.L. ,
 29 c. (C.)(pending before the Legislature as this bill); or

30 (2) for other good cause **as expeditiously as possible**¹.

31 b. If the Court **orders a later hearing under paragraph (1) of**
 32 subsection a., **allows for discovery under subsection d. of section 4**
 33 of P.L. , c. (C.)(pending before the Legislature as this bill),¹

34 the court shall hear the **motion** order to show cause¹ under
 35 section 3 of P.L. , c. (C.)(pending before the Legislature as
 36 this bill) **not later than 60 days after the court order allowing the**

37 discovery, unless the court orders a later hearing under paragraph
 38 (2) of subsection a **as soon as practicable after the conclusion of**
 39 time set forth in its order permitting limited discovery pursuant to

40 subsection d. of section 4 of P.L. , c. (C.)(pending before the
 41 Legislature as this bill)¹.

42

43 6. Proof.

44 In ruling on **a motion** an order to show cause¹ under section 3
 45 of P.L. , c. (C.)(pending before the Legislature as this bill),
 46 the court **shall** may¹ consider the pleadings, the **motion** order

1 to show cause application and supporting certifications, briefs¹, any
2 reply or response to the ¹**【motion】** order to show cause¹, and any
3 evidence that could be considered in ruling on a motion for
4 summary judgment.

5

6 7. Dismissal of cause of action in whole or part.

7 a. In ruling on ¹**【a motion】** an order to show cause¹ under
8 section 3 of P.L. , c. (C.)(pending before the Legislature as
9 this bill), the court shall dismiss with prejudice a cause of action, or
10 part of a cause of action, if:

11 (1) the moving party established under subsection b. of section 2
12 of P.L. , c. (C.)(pending before the Legislature as this bill)
13 that this act applies;

14 (2) the responding party fails to establish under subsection c. of
15 section 2 of P.L. , c. (C.)(pending before the Legislature as
16 this bill) that this act does not apply; and

17 (3) either:

18 (a) the responding party fails to establish a prima facie case as to
19 each essential element of ¹**【the】** any¹ cause of action ¹in the
20 complaint¹; or

21 (b) the moving party establishes that:

22 (i) the responding party failed to state a cause of action upon
23 which relief can be granted; or

24 (ii) there is no genuine issue as to any material fact and the
25 moving party is entitled to judgment as a matter of law on the cause
26 of action or part of the cause of action.

27 b. A voluntary dismissal without prejudice of a responding
28 party's cause of action, or part of a cause of action, that is the
29 subject of ¹**【a motion】** an order to show cause¹ under section 3 of
30 P.L. , c. (C.)(pending before the Legislature as this bill)
31 does not affect a moving party's right to obtain a ruling on the
32 ¹**【motion】** order to show cause¹ and seek costs, attorney's fees, and
33 expenses under section 10 of P.L. , c. (C.)(pending before
34 the Legislature as this bill) .

35 c. A voluntary dismissal with prejudice of a responding's party
36 cause of action, or part of a cause of action, that is the subject of
37 ¹**【a motion】** an order to show cause¹ under section 3 of P.L. ,
38 c. (C.)(pending before the Legislature as this bill) establishes
39 for the purpose of section 10 of P.L. , c. (C.)(pending
40 before the Legislature as this bill) that the moving party prevailed
41 on the motion.

42

43 8. Ruling.

44 The court shall rule on ¹**【a motion】** an order to show cause¹
45 under section 3 of P.L. , c. (C.)(pending before the
46 Legislature as this bill) ¹**【not later than 60 days】** as soon as

1 practicable¹ after a hearing under section 5 of P.L. ,
2 c. (C.)(pending before the Legislature as this bill).

3

4 9. Appeal.

5 A moving party may appeal as a matter of right from an order
6 denying, in whole or in part, **1[a motion] an order to show cause**¹
7 under section 3 of P.L. , c. (C.)(pending before the
8 Legislature as this bill). The appeal must be filed not later than 20
9 days after entry of the order.

10

11 10. Costs, Attorney's Fees, and Expenses.

12 On a motion under section 3 of P.L. , c. (C.)(pending
13 before the Legislature as this bill), the court shall award court costs,
14 reasonable attorney's fees, and reasonable litigation expenses
15 related to the **1[motion] order to show cause**¹:

16 (1) to the moving party if the moving party prevails on the
17 **1[motion] order to show cause**¹; or

18 (2) to the responding party if the responding party prevails on the
19 **1[motion] order to show cause**¹ and the court finds that the
20 **1[motion] order to show cause**¹ was frivolous or filed solely with
21 intent to delay the proceeding.

22

23 11. Construction.

24 This act shall be broadly construed and applied to protect the
25 exercise of the right of freedom of speech and of the press, the right
26 to assembly and petition, and the right of association, guaranteed by
27 the United State Constitution or the New Jersey Constitution.

28

29 12. Uniformity of Application and Construction.

30 In applying and construing this uniform act, consideration must
31 be given to the need to promote uniformity of the law with respect
32 to its subject matter among states that enact it.

33

34 13. Severability.

35 If any provision of this act or its application to any person or
36 circumstance is held invalid, the invalidity does not affect other
37 provisions or applications of this act which can be given effect with
38 the invalid provision or application, and to this end the provisions
39 of this act are severable.

40

41 14. This act shall take effect on the 30th day after enactment and
42 shall apply to a civil action filed or cause of action asserted in a
43 civil action on or after the effective date.

44

45

46

S2802 [1R]

6

- 1 “Uniform Public Expression Protection Act”; provides for
- 2 expedited process for dismissal of “Strategic Lawsuit Against
- 3 Public Participation” (SLAPP).

SENATE JUDICIARY COMMITTEE

STATEMENT TO

SENATE, No. 2802

STATE OF NEW JERSEY

DATED: MARCH 20, 2023

The Senate Judiciary Committee reports favorably Senate Bill No. 2802.

This bill, titled the “Uniform Public Expression Protection Act,” would provide an expedited motion and process to dismiss a “Strategic Lawsuit Against Public Participation” (“SLAPP”). The bill is based on the 2020 uniform act drafted and approved by the Uniform Law Commission (also known as the National Conference of Commissioners on Uniform State Laws). The following presents a section-by-section summary of the uniform act.

Section 1 provides that the act may be cited as the “Uniform Public Expression Protection Act.”

Section 2 defines terms and the causes of action asserted in civil actions that fall under the act. This act applies to a civil cause of action asserted against a person based on the person’s:

(1) communication in a legislative, executive, judicial, administrative, or other governmental proceeding;

(2) communication on an issue under consideration or review in a legislative, executive, judicial, administrative, or other governmental proceeding; or

(3) exercise of the right of freedom of speech or of the press, the right to assembly or petition, or the right of association, guaranteed by the United State Constitution or the New Jersey Constitution, on a matter of public concern.

Subsection c. of this section provides that the bill would not be applicable to the following causes of action:

(1) against a governmental unit or an employee or agent of a governmental unit acting or purporting to act in an official capacity;

(2) by a governmental unit or an employee or agent of a governmental unit acting in an official capacity to enforce a law to protect against an imminent threat to public health or safety; or

(3) against a person primarily engaged in the business of selling or leasing goods or services if the cause of action arises out of a communication related to the person’s sale or lease of the goods or services. “Goods or services” is defined in section 2 of the bill as not including “the creation, dissemination, exhibition, or advertisement or similar promotion of a dramatic, literary, musical, political, journalistic, or artistic work.”

Section 3 permits a party to file a special motion for expedited relief to dismiss the cause of action or part thereof. A party may file this special motion for expedited relief within 60 days after a party is served with a petition or complaint, crossclaim, counterclaim, third-party claim, or other pleading that asserts a cause of action that falls under the act, or may file at a later time on a showing of good cause.

Section 4 provides that on the filing of a motion under section 3 to dismiss the cause of action or part thereof:

(1) all other proceedings between the moving party and responding party, including discovery and a pending hearing or motion are stayed; and

(2) on motion by the moving party, the court may stay a hearing or motion involving another party, or discovery by another party, if the hearing or ruling on the motion would adjudicate, or the discovery would relate to, an issue material to the motion under section 3.

The stay would remain in effect until the entry of an order ruling on the motion under section 3 and expiration of the time under section 9 for the moving party to appeal the order, which is not later than 20 days after entry of the order.

With limited exceptions, if a party appeals from an order ruling on a motion under section 3, all proceedings between all parties in the action are stayed until the conclusion of the appeal. As to the exceptions: a motion under section 10 for costs, attorney's fees, and expenses is not subject to a stay; a stay does not affect a party's ability to voluntarily dismiss a cause of action or party to a cause of action, or move to sever a cause of action; and for good cause, during a stay a court may hear and rule on a motion unrelated to the section 3 motion and a motion seeking a special or preliminary injunction to protect against an imminent threat to public health or safety. Also, the court may permit limited discovery during a stay if a party shows that specific information is necessary to establish whether a party has satisfied or failed to satisfy a burden enumerated under subsection a. of section 7 (see below), and the information is not reasonably available unless discovery is allowed

Section 5 requires the court to hear a motion under section 3 to dismiss the cause of action or part thereof within 60 days after filing the motion, unless the court orders a later hearing to allow discovery as heretofore described under section 4, or for other good cause.

Section 6 provides that in ruling on a motion under section 3 to dismiss the cause of action or part thereof, the court would consider the pleadings, the motion, any reply or response to the motion, and any evidence that could be considered in ruling on a motion for summary judgment.

Section 7 provides that in ruling on a motion under section 3 to dismiss the cause of action or part thereof, the court would dismiss with prejudice the action, or part thereof, if:

(1) the moving party established under subsection b. of section 2 that the act applies to the cause of action because it is based on the person's:

(a) communication in a legislative, executive, judicial, administrative, or other governmental proceeding;

(b) communication on an issue under consideration or review in a legislative, executive, judicial, administrative, or other governmental proceeding; or

(c) exercise of the right of freedom of speech or of the press, the right to assembly or petition, or the right of association, guaranteed by the United State Constitution or the New Jersey Constitution, on a matter of public concern.

(2) the responding party fails to establish under subsection c. of section 2 that this act does not apply to the cause of action because it was asserted:

(a) against a governmental unit or an employee or agent of a governmental unit acting or purporting to act in an official capacity;

(b) by a governmental unit or an employee or agent of a governmental unit acting in an official capacity to enforce a law to protect against an imminent threat to public health or safety; or

(c) against a person primarily engaged in the business of selling or leasing goods or services (see definition under section 2 heading) if the cause of action arises out of a communication related to the person's sale or lease of the goods or services; and

(3) either:

(a) the responding party fails to establish a prima facie case as to each essential element of the cause of action; or

(b) the moving party establishes that:

(i) the responding party failed to state a cause of action upon which relief can be granted; or

(ii) there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law on the cause of action or part thereof.

A voluntary dismissal without prejudice of a responding party's cause of action, or part thereof that is the subject of a motion under section 3 to dismiss the cause of action or part thereof does not affect a moving party's right to obtain a ruling on the motion and seek costs, attorney's fees, and expenses. A voluntary dismissal with prejudice of a responding's party cause of action, or part of a cause of action, that is the subject of a motion under section 3 establishes for the purpose of seeking costs, attorney's fees, and expenses that the moving party prevailed on the motion.

Section 8 would require that the court rule on a motion under section 3 to dismiss the cause of action or part thereof within 60 days after a hearing under section 5 on the motion.

Section 9 provides that a moving party may appeal as a matter of right from an order denying, in whole or in part, a motion under

section 3 to dismiss the cause of action or part thereof within 20 days after entry of the order consistent with R.2:5-6 (a) of the Rules of Court.

Section 10 provides that on a motion under section 3 to dismiss the cause of action or part thereof, the court would award court costs, reasonable attorney's fees, and reasonable litigation expenses related to the motion:

(1) to the moving party if the moving party prevails on the motion;
or

(2) to the responding party if the responding party prevails on the motion and the court finds that the motion was frivolous or filed solely with intent to delay the proceeding.

Section 11 provides that this act be broadly construed and applied to protect the exercise of the right of freedom of speech and of the press, the right to assembly and petition, and the right of association, guaranteed by the United States Constitution or the New Jersey Constitution.

Section 12 provides that considerations be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it, in applying and construing this uniform act.

Section 13 is a severability provision, providing that if any provision of this act or its application to any person or circumstance is held invalid, the invalidity would not affect other provisions or applications of this act which can be given effect with the invalid provision or application, and to this end the provisions of this act are severable.

The bill would take effect on the 30th day after enactment, and apply to any civil action filed or cause of action asserted in a civil action on or after that date.

SENATE, No. 2802

STATE OF NEW JERSEY 220th LEGISLATURE

INTRODUCED JUNE 6, 2022

Sponsored by:

Senator JOSEPH A. LAGANA

District 38 (Bergen and Passaic)

Senator JON M. BRAMNICK

District 21 (Morris, Somerset and Union)

Co-Sponsored by:

Senator Stack

SYNOPSIS

“Uniform Public Expression Protection Act”; provides for expedited motion and process for dismissal of “Strategic Lawsuit Against Public Participation” (“SLAPP”).

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 5/22/2023)

1 AN ACT concerning certain actions and supplementing Title 2A of
2 the New Jersey Statutes.

3

4 **BE IT ENACTED** by the Senate and General Assembly of the State
5 of New Jersey:

6

7 1. This act shall be known and may be cited as the “Uniform
8 Public Expression Protection Act.”

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10 2. Scope.

11 a. In this section:

12 (1) “Goods or services” does not include the creation,
13 dissemination, exhibition, or advertisement or similar promotion of
14 a dramatic, literary, musical, political, journalistic, or artistic work.

15 (2) “Governmental unit” means a public corporation or
16 government or governmental subdivision, agency, or
17 instrumentality.

18 (3) “Person” means an individual, estate, trust, partnership,
19 business or nonprofit entity, governmental unit, or other legal
20 entity.

21 b. Except as otherwise provided in subsection c., this act applies
22 to a cause of action asserted in a civil action against a person based
23 on the person’s:

24 (1) communication in a legislative, executive, judicial,
25 administrative, or other governmental proceeding;

26 (2) communication on an issue under consideration or review in
27 a legislative, executive, judicial, administrative, or other
28 governmental proceeding; or

29 (3) exercise of the right of freedom of speech or of the press, the
30 right to assembly or petition, or the right of association, guaranteed
31 by the United State Constitution or the New Jersey Constitution, on
32 a matter of public concern.

33 c. This act does not apply to a cause of action asserted:

34 (1) against a governmental unit or an employee or agent of a
35 governmental unit acting or purporting to act in an official capacity;

36 (2) by a governmental unit or an employee or agent of a
37 governmental unit acting in an official capacity to enforce a law to
38 protect against an imminent threat to public health or safety; or

39 (3) against a person primarily engaged in the business of selling
40 or leasing goods or services if the cause of action arises out of a
41 communication related to the person’s sale or lease of the goods or
42 services.

43

44 3. Special Motion for Expedited Relief.

45 Not later than 60 days after a party is served with a petition or
46 complaint, crossclaim, counterclaim, third-party claim, or other
47 pleading that asserts a cause of action to which this act applies or at

1 a later time on a showing of good cause, the party may file a special
2 motion for expedited relief to dismiss the cause of action or part of
3 the cause of action.

4

5 4. Stay.

6 a. Except as otherwise provided in subsections d. through g., on
7 the filing of a motion under section 3 of P.L. , c.
8 (C.)(pending before the Legislature as this bill):

9 (1) all other proceedings between the moving party and
10 responding party, including discovery and a pending hearing or
11 motion are stayed; and

12 (2) on motion by the moving party, the court may stay a hearing
13 or motion involving another party, or discovery by another party, if
14 the hearing or ruling on the motion would adjudicate, or the
15 discovery would relate to, an issue material to the motion under
16 section 3 of P.L. , c. (C.)(pending before the Legislature as this
17 bill).

18 b. A stay under subsection a. remains in effect until entry of an
19 order ruling on the motion under section 3 of P.L. , c.
20 (C.)(pending before the Legislature as this bill) and expiration of
21 the time under section 9 of P.L. , c. (C.)(pending before the
22 Legislature as this bill) for the moving party to appeal the order.

23 c. Except as otherwise provided in subsections e., f. and g., if a
24 party appeals from an order ruling on a motion under section 3 of
25 P.L. , c. (C.)(pending before the Legislature as this bill), all
26 proceedings between all parties in the action are stayed. The stay
27 remains in effect until the conclusion of the appeal.

28 d. During a stay under subsection a., the court may allow limited
29 discovery if a party shows that specific information is necessary to
30 establish whether a party has satisfied or failed to satisfy a burden
31 under subsection a. of section 7 of P.L. , c. (C.)(pending
32 before the Legislature as this bill) and the information is not
33 reasonably available unless discovery is allowed.

34 e. A motion under section 10 of P.L. , c. (C.)(pending
35 before the Legislature as this bill) for costs, attorney's fees, and
36 expenses is not subject to a stay under this section.

37 f. A stay under this section does not affect a party's ability
38 voluntarily to dismiss a cause of action or party of a cause of action
39 or move to sever a cause of action.

40 g. During a stay under this section, the court for good cause may
41 hear and rule on:

42 (1) a motion unrelated to the motion under section 3 of P.L. , c.
43 (C.)(pending before the Legislature as this bill); and

44 (2) a motion seeking a special or preliminary injunction to
45 protect against an imminent threat to public health or safety.

46

47 5. Hearing.

1 a. The court shall hear a motion under section 3 of P.L. , c.
2 (C.)(pending before the Legislature as this bill) not later than
3 60 days after filing of the motion, unless the court orders a later
4 hearing;

5 (1) to allow discovery under subsection d. of section 4 of P.L. ,
6 c. (C.)(pending before the Legislature as this bill); or
7 (2) for other good cause.

8 b. If the Court orders a later hearing under paragraph (1) of
9 subsection a., the court shall hear the motion under section 3 of
10 P.L. , c. (C.)(pending before the Legislature as this bill) not
11 later than 60 days after the court order allowing the discovery,
12 unless the court orders a later hearing under paragraph (2) of
13 subsection a.

14

15 6. Proof.

16 In ruling on a motion under section 3 of P.L. , c.
17 (C.)(pending before the Legislature as this bill), the court shall
18 consider the pleadings, the motion, any reply or response to the
19 motion, and any evidence that could be considered in ruling on a
20 motion for summary judgment.

21

22 7. Dismissal of cause of action in whole or part.

23 a. In ruling on a motion under section 3 of P.L. , c.
24 (C.)(pending before the Legislature as this bill), the court shall
25 dismiss with prejudice a cause of action, or part of a cause of
26 action, if:

27 (1) the moving party established under subsection b. of section 2
28 of P.L. , c. (C.)(pending before the Legislature as this bill)
29 that this act applies;

30 (2) the responding party fails to establish under subsection c. of
31 section 2 of P.L. , c. (C.)(pending before the Legislature as
32 this bill) that this act does not apply; and

33 (3) either:

34 (a) the responding party fails to establish a prima facie case as to
35 each essential element of the cause of action; or

36 (b) the moving party establishes that:

37 (i) the responding party failed to state a cause of action upon
38 which relief can be granted; or

39 (ii) there is no genuine issue as to any material fact and the
40 moving party is entitled to judgment as a matter of law on the cause
41 of action or part of the cause of action.

42 b. A voluntary dismissal without prejudice of a responding
43 party's cause of action, or part of a cause of action, that is the
44 subject of a motion under section 3 of P.L. , c. (C.)(pending
45 before the Legislature as this bill) does not affect a moving party's
46 right to obtain a ruling on the motion and seek costs, attorney's

1 fees, and expenses under section 10 of P.L. , c.
2 (C.)(pending before the Legislature as this bill) .

3 c. A voluntary dismissal with prejudice of a responding's party
4 cause of action, or part of a cause of action, that is the subject of a
5 motion under section 3 of P.L. , c. (C.)(pending before the
6 Legislature as this bill) establishes for the purpose of section 10 of
7 P.L. , c. (C.)(pending before the Legislature as this bill) that
8 the moving party prevailed on the motion.

9
10 8. Ruling.

11 The court shall rule on a motion under section 3 of P.L. , c.
12 (C.)(pending before the Legislature as this bill) not later than
13 60 days after a hearing under section 5 of P.L. , c.
14 (C.)(pending before the Legislature as this bill).

15
16 9. Appeal.

17 A moving party may appeal as a matter of right from an order
18 denying, in whole or in part, a motion under section 3 of P.L. , c.
19 (C.)(pending before the Legislature as this bill). The appeal
20 must be filed not later than 20 days after entry of the order.

21
22 10. Costs, Attorney's Fees, and Expenses.

23 On a motion under section 3 of P.L. , c. (C.)(pending
24 before the Legislature as this bill), the court shall award court costs,
25 reasonable attorney's fees, and reasonable litigation expenses
26 related to the motion:

27 (1) to the moving party if the moving party prevails on the
28 motion; or

29 (2) to the responding party if the responding party prevails on the
30 motion and the court finds that the motion was frivolous or filed
31 solely with intent to delay the proceeding.

32
33 11. Construction.

34 This act shall be broadly construed and applied to protect the
35 exercise of the right of freedom of speech and of the press, the right
36 to assembly and petition, and the right of association, guaranteed by
37 the United State Constitution or the New Jersey Constitution.

38
39 12. Uniformity of Application and Construction.

40 In applying and construing this uniform act, consideration must
41 be given to the need to promote uniformity of the law with respect
42 to its subject matter among states that enact it.

43
44 13. Severability.

45 If any provision of this act or its application to any person or
46 circumstance is held invalid, the invalidity does not affect other
47 provisions or applications of this act which can be given effect with

1 the invalid provision or application, and to this end the provisions
2 of this act are severable.

3

4 14. This act shall take effect on the 30th day after enactment and
5 shall apply to a civil action filed or cause of action asserted in a
6 civil action on or after the effective date.

7

8

9

STATEMENT

10

11 This bill, titled the “Uniform Public Expression Protection Act,”
12 would provide an expedited motion and process to dismiss a
13 “Strategic Lawsuit Against Public Participation” (“SLAPP”). The
14 bill is based on the 2020 uniform act drafted and approved by the
15 Uniform Law Commission (also known as the National Conference
16 of Commissioners on Uniform State Laws).

17 Section 1 provides that the act may be cited as the “Uniform
18 Public Expression Protection Act.”

19 Section 2 defines terms and the causes of action asserted in civil
20 actions that fall under the act. This act applies to a civil cause of
21 action asserted against a person based on the person’s:

22 (1) communication in a legislative, executive, judicial,
23 administrative, or other governmental proceeding;

24 (2) communication on an issue under consideration or review in
25 a legislative, executive, judicial, administrative, or other
26 governmental proceeding; or

27 (3) exercise of the right of freedom of speech or of the press, the
28 right to assembly or petition, or the right of association, guaranteed
29 by the United State Constitution or the New Jersey Constitution, on
30 a matter of public concern.

31 Subsection c. of this section provides that the bill would not be
32 applicable to the following causes of action:

33 (1) against a governmental unit or an employee or agent of a
34 governmental unit acting or purporting to act in an official capacity;

35 (2) by a governmental unit or an employee or agent of a
36 governmental unit acting in an official capacity to enforce a law to
37 protect against an imminent threat to public health or safety; or

38 (3) against a person primarily engaged in the business of selling
39 or leasing goods or services if the cause of action arises out of a
40 communication related to the person’s sale or lease of the goods or
41 services.

42 Section 3 permits a party to file a special motion for expedited
43 relief to dismiss the cause of action or part thereof. A party may
44 file this special motion for expedited relief within 60 days after a
45 party is served with a petition or complaint, crossclaim,
46 counterclaim, third-party claim, or other pleading that asserts a

1 cause of action that falls under the act, or at a later time on a
2 showing of good cause.

3 Section 4 provides that on the filing of a motion under section 3:

4 (1) all other proceedings between the moving party and
5 responding party, including discovery and a pending hearing or
6 motion are stayed; and

7 (2) on motion by the moving party, the court may stay a hearing
8 or motion involving another party, or discovery by another party, if
9 the hearing or ruling on the motion would adjudicate, or the
10 discovery would relate to, an issue material to the motion under
11 section 3.

12 The stay would remain in effect until the entry of an order ruling
13 on the motion under section 3 and expiration of the time under
14 section 9 for the moving party to appeal the order.

15 Except as provided in subsections e., f., and g., a party appeals
16 from an order ruling on a motion under section 3, all proceedings
17 between all parties in the action are stayed until the conclusion of
18 the appeal. The court may permit limited discovery during a stay if
19 a party shows that specific information is necessary to establish
20 whether a party has satisfied or failed to satisfy a burden under
21 subsection a. of section 7 and the information is not reasonably
22 available unless discovery is allowed.

23 Section 5 permits the court to hear a motion under section 3 within
24 60 days after filing the motion, unless the court orders a later
25 hearing to allow discovery under subsection d. of section 4 or for
26 other good cause.

27 Section 6 provides that in ruling on a motion under section 3, the
28 court would consider the pleadings, the motion, any reply or
29 response to the motion, and any evidence that could be considered
30 in ruling on a motion for summary judgment.

31 Section 7 provides that in ruling on a motion under section 3, the
32 court would dismiss with prejudice a cause of action, or part
33 thereof, if:

34 (1) the moving party established under subsection b. of section 2
35 that this act applies;

36 (2) the responding party fails to establish under subsection c. of
37 section 2 that this act does not apply; and

38 (3) either:

39 (a) the responding party fails to establish a prima facie case as to
40 each essential element of the cause of action; or

41 (b) the moving party establishes that:

42 (i) the responding party failed to state a cause of action upon
43 which relief can be granted; or

44 (ii) there is no genuine issue as to any material fact and the
45 moving party is entitled to judgment as a matter of law on the cause
46 of action or part thereof.

1 A voluntary dismissal without prejudice of a responding party's
2 cause of action, or part thereof that is the subject of a motion under
3 section 3 does not affect a moving party's right to obtain a ruling on
4 the motion and seek costs, attorney's fees, and expenses under
5 section 10. A voluntary dismissal with prejudice of a responding's
6 party cause of action, or part of a cause of action, that is the subject
7 of a motion under section 3 establishes for the purpose of section 10
8 that the moving party prevailed on the motion.

9 Section 8 would provide that the court would rule on a motion
10 under section 3 within 60 days after a hearing under section 5.

11 Section 9 provides that a moving party may appeal as a matter of
12 right from an order denying, in whole or in part, a motion under
13 section 3 within 20 days after entry of the order consistent with R.
14 2:5-6(a) of the Rules of Court.

15 Section 10 provides that on a motion under section 3, the court
16 would award court costs, reasonable attorney's fees, and reasonable
17 litigation expenses related to the motion:

18 (1) to the moving party if the moving party prevails on the
19 motion; or

20 (2) to the responding party if the responding party prevails on the
21 motion and the court finds that the motion was frivolous or filed
22 solely with intent to delay the proceeding.

23 Section 11 provides that this act would be broadly construed and
24 applied to protect the exercise of the right of freedom of speech and
25 of the press, the right to assembly and petition, and the right of
26 association, guaranteed by the United States Constitution or the
27 New Jersey Constitution.

28 Section 12 provides that considerations must be given to the need to
29 promote uniformity of the law with respect to its subject matter
30 among states that enact it, in applying and construing this uniform
31 act.

32 Section 13 provides that if any provision of this act or its
33 application to any person or circumstance is held invalid, the
34 invalidity would not affect other provisions or applications of this
35 act which can be given effect with the invalid provision or
36 application, and to this end the provisions of this act are severable.

LEGISLATIVE FISCAL ESTIMATE
SENATE, No. 2802
STATE OF NEW JERSEY
220th LEGISLATURE

DATED: JUNE 5, 2023

SUMMARY

Synopsis: “Uniform Public Expression Protection Act”; provides for expedited motion and process for dismissal of “Strategic Lawsuit Against Public Participation” (“SLAPP”).

Type of Impact: Potential annual net State cost savings.

Agencies Affected: The Judiciary.

Office of Legislative Services Estimate

| Fiscal Impact | <u>Annual</u> |
|---|----------------------|
| Potential Net State Cost Savings | Indeterminate |

- The Office of Legislative Services (OLS) finds that this bill may result in some indeterminate net cost savings to the Judiciary by providing an expedited motion and process to dismiss a strategic lawsuit against public Participation (SLAPP). It may also act as a deterrent from such lawsuits being filed in the first place. However, it is unclear if the reduced court time related to these lawsuits would translate into any savings for the Judiciary.
- According to the American Bar Association, strategic lawsuits against public participation are meritless lawsuits designed to chill constitutionally protected speech on matters of public concern.

BILL DESCRIPTION

This bill provides for an expedited motion process to dismiss a strategic lawsuit against public participation. The bill is based on the 2020 uniform act drafted and approved by the Uniform Law Commission (also known as the National Conference of Commissioners on Uniform State Laws).

Under the bill, a party is permitted to file a special motion for expedited relief to dismiss the cause of action or part thereof. A party may file this special motion for expedited relief within 60 days after a party is served with a petition or complaint, crossclaim, counterclaim, third-party claim, or other pleading that asserts a cause of action that falls under the act, or may file at a later time on a showing of good cause.

The bill requires the court to hear a motion under section 3 to dismiss the cause of action or part thereof within 60 days after filing the motion, unless the court orders a later hearing to allow discovery, or for other good cause.

The bill provides that on a motion to dismiss the cause of action or part thereof, the court would be required to award court costs, reasonable attorney's fees, and reasonable litigation expenses related to the motion:

(1) to the moving party if the moving party prevails on the motion; or

(2) to the responding party if the responding party prevails on the motion and the court finds that the motion was frivolous or filed solely with intent to delay the proceeding.

The bill provides that this act is to be broadly construed and applied to protect the exercise of the right of freedom of speech and of the press, the right to assembly and petition, and the right of association, guaranteed by the United States Constitution or the New Jersey Constitution.

The bill would take effect on the 30th day after enactment, and apply to any civil action filed on or after that date.

FISCAL ANALYSIS

EXECUTIVE BRANCH

None received.

OFFICE OF LEGISLATIVE SERVICES

The OLS finds that this bill may result in some indeterminate cost savings to the Judiciary by providing an expedited motion and process to dismiss a strategic lawsuit against public participation. It may also act as a deterrent from such lawsuits being filed in the first place. However, it is unclear if the reduced court time related to these lawsuits would translate into any savings for the Judiciary.

Strategic lawsuits against public participation are meritless lawsuits designed to chill constitutionally protected speech on matters of public concern. In a prior fiscal estimate for a similar bill, the Administrative Office of the Courts said that it anticipated a marginal fiscal impact on the Judiciary. As of April 2023, 32 states and the District of Columbia have anti-SLAPP laws.

Section: Judiciary

*Analyst: Anuja Pande Joshi
Senior Fiscal Analyst*

*Approved: Thomas Koenig
Legislative Budget and Finance Officer*

This legislative fiscal estimate has been produced by the Office of Legislative Services due to the failure of the Executive Branch to respond to our request for a fiscal note.

This fiscal estimate has been prepared pursuant to P.L.1980, c.67 (C.52:13B-6 et seq.).

LEGISLATIVE FISCAL ESTIMATE
SENATE, No. 2802
STATE OF NEW JERSEY
220th LEGISLATURE

DATED: JUNE 5, 2023

SUMMARY

Synopsis: “Uniform Public Expression Protection Act”; provides for expedited motion and process for dismissal of “Strategic Lawsuit Against Public Participation” (“SLAPP”).

Type of Impact: Potential annual net State cost savings.

Agencies Affected: The Judiciary.

Office of Legislative Services Estimate

| Fiscal Impact | <u>Annual</u> |
|---|----------------------|
| Potential Net State Cost Savings | Indeterminate |

- The Office of Legislative Services (OLS) finds that this bill may result in some indeterminate net cost savings to the Judiciary by providing an expedited motion and process to dismiss a strategic lawsuit against public Participation (SLAPP). It may also act as a deterrent from such lawsuits being filed in the first place. However, it is unclear if the reduced court time related to these lawsuits would translate into any savings for the Judiciary.
- According to the American Bar Association, strategic lawsuits against public participation are meritless lawsuits designed to chill constitutionally protected speech on matters of public concern.

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This bill provides for an expedited motion process to dismiss a strategic lawsuit against public participation. The bill is based on the 2020 uniform act drafted and approved by the Uniform Law Commission (also known as the National Conference of Commissioners on Uniform State Laws).

Under the bill, a party is permitted to file a special motion for expedited relief to dismiss the cause of action or part thereof. A party may file this special motion for expedited relief within 60 days after a party is served with a petition or complaint, crossclaim, counterclaim, third-party claim, or other pleading that asserts a cause of action that falls under the act, or may file at a later time on a showing of good cause.

The bill requires the court to hear a motion under section 3 to dismiss the cause of action or part thereof within 60 days after filing the motion, unless the court orders a later hearing to allow discovery, or for other good cause.

The bill provides that on a motion to dismiss the cause of action or part thereof, the court would be required to award court costs, reasonable attorney's fees, and reasonable litigation expenses related to the motion:

(1) to the moving party if the moving party prevails on the motion; or

(2) to the responding party if the responding party prevails on the motion and the court finds that the motion was frivolous or filed solely with intent to delay the proceeding.

The bill provides that this act is to be broadly construed and applied to protect the exercise of the right of freedom of speech and of the press, the right to assembly and petition, and the right of association, guaranteed by the United States Constitution or the New Jersey Constitution.

The bill would take effect on the 30th day after enactment, and apply to any civil action filed on or after that date.

FISCAL ANALYSIS

EXECUTIVE BRANCH

None received.

OFFICE OF LEGISLATIVE SERVICES

The OLS finds that this bill may result in some indeterminate cost savings to the Judiciary by providing an expedited motion and process to dismiss a strategic lawsuit against public participation. It may also act as a deterrent from such lawsuits being filed in the first place. However, it is unclear if the reduced court time related to these lawsuits would translate into any savings for the Judiciary.

Strategic lawsuits against public participation are meritless lawsuits designed to chill constitutionally protected speech on matters of public concern. In a prior fiscal estimate for a similar bill, the Administrative Office of the Courts said that it anticipated a marginal fiscal impact on the Judiciary. As of April 2023, 32 states and the District of Columbia have anti-SLAPP laws.

Section: Judiciary

*Analyst: Anuja Pande Joshi
Senior Fiscal Analyst*

*Approved: Thomas Koenig
Legislative Budget and Finance Officer*

This legislative fiscal estimate has been produced by the Office of Legislative Services due to the failure of the Executive Branch to respond to our request for a fiscal note.

This fiscal estimate has been prepared pursuant to P.L.1980, c.67 (C.52:13B-6 et seq.).

LEGISLATIVE FISCAL ESTIMATE

[First Reprint]

SENATE, No. 2802 STATE OF NEW JERSEY 220th LEGISLATURE

DATED: JULY 5, 2023

SUMMARY

- Synopsis:** “Uniform Public Expression Protection Act”; provides for expedited process for dismissal of “Strategic Lawsuit Against Public Participation” (SLAPP).
- Type of Impact:** Potential annual net State cost savings.
- Agencies Affected:** The Judiciary.

Office of Legislative Services Estimate

| Fiscal Impact | <u>Annual</u> |
|---|----------------------|
| Potential Net State Cost Savings | Indeterminate |

- The Office of Legislative Services (OLS) finds that this bill may result in some indeterminate net cost savings to the Judiciary by providing a process to dismiss a strategic lawsuit against public participation (SLAPP). It may also act as a deterrent from such lawsuits being filed in the first place. However, it is unclear if the reduced court time related to these lawsuits would translate into any savings for the Judiciary.
- According to the American Bar Association, SLAPP suits are meritless lawsuits designed to chill constitutionally protected speech on matters of public concern.

BILL DESCRIPTION

This bill, titled the “Uniform Public Expression Protection Act,” would provide an order to show cause and expedited process to dismiss a “Strategic Lawsuit Against Public Participation” (“SLAPP”). The bill is based on the 2020 uniform act drafted and approved by the Uniform Law Commission, also known as the National Conference of Commissioners on Uniform State Laws.

FISCAL ANALYSIS

EXECUTIVE BRANCH

None received.

OFFICE OF LEGISLATIVE SERVICES

The OLS finds that this bill may result in some indeterminate net cost savings to the Judiciary by providing a process to dismiss a strategic lawsuit against public participation. It may also act as a deterrent from such lawsuits being filed in the first place. However, it is unclear if the reduced court time related to these lawsuits would translate into any savings for the Judiciary.

SLAPP suits are meritless lawsuits designed to chill constitutionally protected speech on matters of public concern. In a prior fiscal estimate for a similar bill, the Administrative Office of the Courts said that it anticipated a marginal fiscal impact on the Judiciary. As of April 2023, 32 states and the District of Columbia have anti-SLAPP laws.

Section: Judiciary
Analyst: Anuja Pande Joshi
Senior Fiscal Analyst
Approved: Thomas Koenig
Legislative Budget and Finance Officer

This legislative fiscal estimate has been produced by the Office of Legislative Services due to the failure of the Executive Branch to respond to our request for a fiscal note.

This fiscal estimate has been prepared pursuant to P.L.1980, c.67 (C.52:13B-6 et seq.).

ASSEMBLY, No. 4393

STATE OF NEW JERSEY 220th LEGISLATURE

INTRODUCED JUNE 27, 2022

Sponsored by:

Assemblyman RAJ MUKHERJI

District 33 (Hudson)

Assemblywoman CAROL A. MURPHY

District 7 (Burlington)

SYNOPSIS

“Uniform Public Expression Protection Act”; provides for expedited motion and process for dismissal of “Strategic Lawsuit Against Public Participation” (“SLAPP”).

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 5/18/2023)

1 AN ACT concerning certain actions and supplementing Title 2A of
2 the New Jersey Statutes.

3

4 **BE IT ENACTED** by the Senate and General Assembly of the State
5 of New Jersey:

6

7 1. This act shall be known and may be cited as the “Uniform
8 Public Expression Protection Act.”

9

10 2. Scope.

11 a. In this section:

12 (1) “Goods or services” does not include the creation,
13 dissemination, exhibition, or advertisement or similar promotion of
14 a dramatic, literary, musical, political, journalistic, or artistic work.

15 (2) “Governmental unit” means a public corporation or
16 government or governmental subdivision, agency, or
17 instrumentality.

18 (3) “Person” means an individual, estate, trust, partnership,
19 business or nonprofit entity, governmental unit, or other legal
20 entity.

21 b. Except as otherwise provided in subsection c., this act
22 applies to a cause of action asserted in a civil action against a
23 person based on the person’s:

24 (1) communication in a legislative, executive, judicial,
25 administrative, or other governmental proceeding;

26 (2) communication on an issue under consideration or review in
27 a legislative, executive, judicial, administrative, or other
28 governmental proceeding; or

29 (3) exercise of the right of freedom of speech or of the press, the
30 right to assembly or petition, or the right of association, guaranteed
31 by the United State Constitution or the New Jersey Constitution, on
32 a matter of public concern.

33 c. This act does not apply to a cause of action asserted:

34 (1) against a governmental unit or an employee or agent of a
35 governmental unit acting or purporting to act in an official capacity;

36 (2) by a governmental unit or an employee or agent of a
37 governmental unit acting in an official capacity to enforce a law to
38 protect against an imminent threat to public health or safety; or

39 (3) against a person primarily engaged in the business of selling
40 or leasing goods or services if the cause of action arises out of a
41 communication related to the person’s sale or lease of the goods or
42 services.

43

44 3. Special Motion for Expedited Relief.

45 Not later than 60 days after a party is served with a petition or
46 complaint, crossclaim, counterclaim, third-party claim, or other
47 pleading that asserts a cause of action to which this act applies or at
48 a later time on a showing of good cause, the party may file a special

1 motion for expedited relief to dismiss the cause of action or part of
2 the cause of action.

3

4 4. Stay.

5 a. Except as otherwise provided in subsections d. through g.,
6 on the filing of a motion under section 3 of P.L. ,
7 c. (C.)(pending before the Legislature as this bill):

8 (1) all other proceedings between the moving party and
9 responding party, including discovery and a pending hearing or
10 motion are stayed; and

11 (2) on motion by the moving party, the court may stay a hearing
12 or motion involving another party, or discovery by another party, if
13 the hearing or ruling on the motion would adjudicate, or the
14 discovery would relate to, an issue material to the motion under
15 section 3 of P.L. , c. (C.)(pending before the Legislature as this
16 bill).

17 b. A stay under subsection a. remains in effect until entry of an
18 order ruling on the motion under section 3 of P.L. ,
19 c. (C.)(pending before the Legislature as this bill) and expiration
20 of the time under section 9 of P.L. , c. (C.)(pending before
21 the Legislature as this bill) for the moving party to appeal the order.

22 c. Except as otherwise provided in subsections e., f. and g., if a
23 party appeals from an order ruling on a motion under section 3 of
24 P.L. , c. (C.)(pending before the Legislature as this bill), all
25 proceedings between all parties in the action are stayed. The stay
26 remains in effect until the conclusion of the appeal.

27 d. During a stay under subsection a., the court may allow limited
28 discovery if a party shows that specific information is necessary to
29 establish whether a party has satisfied or failed to satisfy a burden
30 under subsection a. of section 7 of P.L. , c. (C.)(pending
31 before the Legislature as this bill) and the information is not
32 reasonably available unless discovery is allowed.

33 e. A motion under section 10 of P.L. , c. (C.)(pending
34 before the Legislature as this bill) for costs, attorney's fees, and
35 expenses is not subject to a stay under this section.

36 f. A stay under this section does not affect a party's ability
37 voluntarily to dismiss a cause of action or party of a cause of action
38 or move to sever a cause of action.

39 g. During a stay under this section, the court for good cause
40 may hear and rule on:

41 (1) a motion unrelated to the motion under section 3 of P.L. ,
42 c. (C.)(pending before the Legislature as this bill); and

43 (2) a motion seeking a special or preliminary injunction to
44 protect against an imminent threat to public health or safety.

45

46 5. Hearing.

47 a. The court shall hear a motion under section 3 of P.L. ,

48 c. (C.)(pending before the Legislature as this bill) not later

1 than 60 days after filing of the motion, unless the court orders a
2 later hearing;

3 (1) to allow discovery under subsection d. of section 4 of P.L. ,
4 c. (C.)(pending before the Legislature as this bill); or

5 (2) for other good cause.

6 b. If the Court orders a later hearing under paragraph (1) of
7 subsection a., the court shall hear the motion under section 3 of
8 P.L. , c. (C.)(pending before the Legislature as this bill) not
9 later than 60 days after the court order allowing the discovery,
10 unless the court orders a later hearing under paragraph (2) of
11 subsection a.

12

13 6. Proof.

14 In ruling on a motion under section 3 of P.L. ,
15 c. (C.)(pending before the Legislature as this bill), the court
16 shall consider the pleadings, the motion, any reply or response to
17 the motion, and any evidence that could be considered in ruling on a
18 motion for summary judgment.

19

20 7. Dismissal of cause of action in whole or part.

21 a. In ruling on a motion under section 3 of P.L. ,
22 c. (C.)(pending before the Legislature as this bill), the court
23 shall dismiss with prejudice a cause of action, or part of a cause of
24 action, if:

25 (1) the moving party established under subsection b. of section 2
26 of P.L. , c. (C.)(pending before the Legislature as this bill)
27 that this act applies;

28 (2) the responding party fails to establish under subsection c. of
29 section 2 of P.L. , c. (C.)(pending before the Legislature as
30 this bill) that this act does not apply; and

31 (3) either:

32 (a) the responding party fails to establish a prima facie case as to
33 each essential element of the cause of action; or

34 (b) the moving party establishes that:

35 (i) the responding party failed to state a cause of action upon
36 which relief can be granted; or

37 (ii) there is no genuine issue as to any material fact and the
38 moving party is entitled to judgment as a matter of law on the cause
39 of action or part of the cause of action.

40 b. A voluntary dismissal without prejudice of a responding
41 party's cause of action, or part of a cause of action, that is the
42 subject of a motion under section 3 of P.L. , c. (C.)(pending
43 before the Legislature as this bill) does not affect a moving party's
44 right to obtain a ruling on the motion and seek costs, attorney's
45 fees, and expenses under section 10 of P.L. ,
46 c. (C.)(pending before the Legislature as this bill) .

47 c. A voluntary dismissal with prejudice of a responding's party
48 cause of action, or part of a cause of action, that is the subject of a

1 motion under section 3 of P.L. , c. (C.)(pending before the
2 Legislature as this bill) establishes for the purpose of section 10 of
3 P.L. , c. (C.)(pending before the Legislature as this bill) that
4 the moving party prevailed on the motion.

5

6 8. Ruling.

7 The court shall rule on a motion under section 3 of P.L. ,
8 c. (C.)(pending before the Legislature as this bill) not later
9 than 60 days after a hearing under section 5 of P.L. ,
10 c. (C.)(pending before the Legislature as this bill).

11

12 9. Appeal.

13 A moving party may appeal as a matter of right from an order
14 denying, in whole or in part, a motion under section 3 of P.L. ,
15 c. (C.)(pending before the Legislature as this bill). The appeal
16 must be filed not later than 20 days after entry of the order.

17

18 10. Costs, Attorney's Fees, and Expenses.

19 On a motion under section 3 of P.L. , c. (C.)(pending
20 before the Legislature as this bill), the court shall award court costs,
21 reasonable attorney's fees, and reasonable litigation expenses
22 related to the motion:

23 (1) to the moving party if the moving party prevails on the
24 motion; or

25 (2) to the responding party if the responding party prevails on the
26 motion and the court finds that the motion was frivolous or filed
27 solely with intent to delay the proceeding.

28

29 11. Construction.

30 This act shall be broadly construed and applied to protect the
31 exercise of the right of freedom of speech and of the press, the right
32 to assembly and petition, and the right of association, guaranteed by
33 the United State Constitution or the New Jersey Constitution.

34

35 12. Uniformity of Application and Construction.

36 In applying and construing this uniform act, consideration must
37 be given to the need to promote uniformity of the law with respect
38 to its subject matter among states that enact it.

39

40 13. Severability.

41 If any provision of this act or its application to any person or
42 circumstance is held invalid, the invalidity does not affect other
43 provisions or applications of this act which can be given effect with
44 the invalid provision or application, and to this end the provisions
45 of this act are severable.

1 (1) all other proceedings between the moving party and
2 responding party, including discovery and a pending hearing or
3 motion are stayed; and

4 (2) on motion by the moving party, the court may stay a hearing
5 or motion involving another party, or discovery by another party, if
6 the hearing or ruling on the motion would adjudicate, or the
7 discovery would relate to, an issue material to the motion under
8 section 3.

9 The stay would remain in effect until the entry of an order ruling
10 on the motion under section 3 and expiration of the time under
11 section 9 for the moving party to appeal the order.

12 Except as provided in subsections e., f., and g., a party appeals
13 from an order ruling on a motion under section 3, all proceedings
14 between all parties in the action are stayed until the conclusion of
15 the appeal. The court may permit limited discovery during a stay if
16 a party shows that specific information is necessary to establish
17 whether a party has satisfied or failed to satisfy a burden under
18 subsection a. of section 7 and the information is not reasonably
19 available unless discovery is allowed.

20 Section 5 permits the court to hear a motion under section 3 within
21 60 days after filing the motion, unless the court orders a later
22 hearing to allow discovery under subsection d. of section 4 or for
23 other good cause.

24 Section 6 provides that in ruling on a motion under section 3, the
25 court would consider the pleadings, the motion, any reply or
26 response to the motion, and any evidence that could be considered
27 in ruling on a motion for summary judgment.

28 Section 7 provides that in ruling on a motion under section 3, the
29 court would dismiss with prejudice a cause of action, or part
30 thereof, if:

31 (1) the moving party established under subsection b. of section 2
32 that this act applies;

33 (2) the responding party fails to establish under subsection c. of
34 section 2 that this act does not apply; and

35 (3) either:

36 (a) the responding party fails to establish a prima facie case as to
37 each essential element of the cause of action; or

38 (b) the moving party establishes that:

39 (i) the responding party failed to state a cause of action upon
40 which relief can be granted; or

41 (ii) there is no genuine issue as to any material fact and the
42 moving party is entitled to judgment as a matter of law on the cause
43 of action or part thereof.

44 A voluntary dismissal without prejudice of a responding party's
45 cause of action, or part thereof that is the subject of a motion under
46 section 3 does not affect a moving party's right to obtain a ruling on
47 the motion and seek costs, attorney's fees, and expenses under
48 section 10. A voluntary dismissal with prejudice of a responding's

1 party cause of action, or part of a cause of action, that is the subject
2 of a motion under section 3 establishes for the purpose of section 10
3 that the moving party prevailed on the motion.
4 Section 8 would provide that the court would rule on a motion
5 under section 3 within 60 days after a hearing under section 5.
6 Section 9 provides that a moving party may appeal as a matter of
7 right from an order denying, in whole or in part, a motion under
8 section 3 within 20 days after entry of the order consistent with R.
9 2:5-6(a) of the Rules of Court.
10 Section 10 provides that on a motion under section 3, the court
11 would award court costs, reasonable attorney's fees, and reasonable
12 litigation expenses related to the motion:
13 (1) to the moving party if the moving party prevails on the
14 motion; or
15 (2) to the responding party if the responding party prevails on the
16 motion and the court finds that the motion was frivolous or filed
17 solely with intent to delay the proceeding.
18 Section 11 provides that this act would be broadly construed and
19 applied to protect the exercise of the right of freedom of speech and
20 of the press, the right to assembly and petition, and the right of
21 association, guaranteed by the United States Constitution or the
22 New Jersey Constitution.
23 Section 12 provides that considerations must be given to the need to
24 promote uniformity of the law with respect to its subject matter
25 among states that enact it, in applying and construing this uniform
26 act.
27 Section 13 provides that if any provision of this act or its
28 application to any person or circumstance is held invalid, the
29 invalidity would not affect other provisions or applications of this
30 act which can be given effect with the invalid provision or
31 application, and to this end the provisions of this act are severable.

ASSEMBLY JUDICIARY COMMITTEE

STATEMENT TO

ASSEMBLY, No. 4393

with committee amendments

STATE OF NEW JERSEY

DATED: MAY 18, 2023

The Assembly Judiciary Committee reports favorably and with committee amendments Assembly Bill No. 4393.

This bill, titled the “Uniform Public Expression Protection Act,” would provide an order to show cause and expedited process to dismiss a “Strategic Lawsuit Against Public Participation” (“SLAPP”). The bill is based on the 2020 uniform act drafted and approved by the Uniform Law Commission, also known as the National Conference of Commissioners on Uniform State Laws.

Actions that Constitute SLAPP

This act applies to a civil cause of action asserted against a person based on the person’s:

- (1) communication in a legislative, executive, judicial, administrative, or other governmental proceeding;
- (2) communication on an issue under consideration or review in a legislative, executive, judicial, administrative, or other governmental proceeding; or
- (3) exercise of the right of freedom of speech or of the press, the right to assembly or petition, or the right of association, guaranteed by the United State Constitution or the New Jersey Constitution, on a matter of public concern.

Exceptions

The bill would not be applicable to the following causes of action:

- (1) against a governmental unit or an employee or agent of a governmental unit acting or purporting to act in an official capacity;
- (2) by a governmental unit or an employee or agent of a governmental unit acting in an official capacity to enforce a law to protect against an imminent threat to public health or safety; or
- (3) against a person primarily engaged in the business of selling or leasing goods or services if the cause of action arises out of a communication related to the person’s sale or lease of the goods or services.

Application for Show Cause Order

The bill permits a party to file an application for an order to show cause for expedited relief to dismiss the cause of action or part thereof. A party may file application within 60 days after a party is served with a petition or complaint, crossclaim, counterclaim, third-party claim, or other pleading that asserts a cause of action that falls under the act, or at a later time on a showing of good cause. The bill provides that on the filing of an order to show cause:

- (1) all other proceedings between the moving party and responding party, including discovery and a pending hearing or motion may be stayed;
- (2) on motion by the moving party, the court may stay an action or proceeding involving another party, or discovery by another party, if the hearing or ruling in that proceeding would adjudicate, or the discovery would relate to, an issue material to the order to show cause; and
- (3) In determining whether to stay any proceedings, there would be a presumption that such a stay shall be granted.

Right to Appeal

A party maintains the right to appeal an order ruling on an order to show cause, and if so appealed, all proceedings between all parties in the action are stayed until the conclusion of the appeal. The court may permit limited discovery during a stay if a party shows that specific information is necessary to establish whether a party has satisfied or failed to satisfy a burden and the information is not reasonably available unless discovery is allowed.

A moving party may appeal as a matter of right from an order denying, in whole or in part, an order to show cause within 20 days after entry of the order consistent with R. 2:5-6(a) of the Rules of Court.

Hearing for Show Cause Order

The bill further provides that the court would hear an order to show cause as expeditiously as possible, unless the court allows limited discovery. In ruling on an order to show cause, the court would consider the pleadings, the order to show cause application and support certifications, briefs, any reply or response to the order to show cause, and any evidence that could be considered in ruling on a motion for summary judgment.

Dismissal of SLAPP Actions

The court is permitted to dismiss with prejudice a cause of action, or part thereof, if:

- (1) the moving party established that the act applies;

(2) the responding party fails to establish that the act does not apply; and

(3) either:

(a) the responding party fails to establish a prima facie case as to each essential element of the cause of action; or

(b) the moving party establishes that:

(i) the responding party failed to state a cause of action upon which relief can be granted; or

(ii) there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law on the cause of action or part thereof.

A voluntary dismissal without prejudice of a responding party's cause of action, or part thereof that is the subject of an order to show cause does not affect a moving party's right to obtain a ruling on the order to show cause and seek costs, attorney's fees, and expenses. A voluntary dismissal with prejudice of a responding party cause of action, or part of a cause of action, that is the subject of an order to show cause establishes that the moving party prevailed on the motion.

COMMITTEE AMENDMENTS

The committee amended the bill to:

(1) clarify that the dismissal of a SLAPP suit may occur upon an "order to show cause," not a "motion;"

(2) require the court to hear an order to show cause as expeditiously as possible and to rule on such as soon as practicable; and

(3) replace synopsis to read: "Uniform Public Expression Protection Act"; provides for expedited process for dismissal of "Strategic Lawsuit Against Public Participation" (SLAPP).

ASSEMBLY APPROPRIATIONS COMMITTEE

STATEMENT TO

[First Reprint]

ASSEMBLY, No. 4393

STATE OF NEW JERSEY

DATED: JUNE 22, 2023

The Assembly Appropriations Committee reports favorably Assembly Bill No, 4393 (1R).

This bill, titled the “Uniform Public Expression Protection Act,” would provide an order to show cause and expedited process to dismiss a “Strategic Lawsuit Against Public Participation” (“SLAPP”). The bill is based on the 2020 uniform act drafted and approved by the Uniform Law Commission, also known as the National Conference of Commissioners on Uniform State Laws.

Actions that Constitute SLAPP

This act applies to a civil cause of action asserted against a person based on the person’s:

- (1) communication in a legislative, executive, judicial, administrative, or other governmental proceeding;
- (2) communication on an issue under consideration or review in a legislative, executive, judicial, administrative, or other governmental proceeding; or
- (3) exercise of the right of freedom of speech or of the press, the right to assembly or petition, or the right of association, guaranteed by the United State Constitution or the New Jersey Constitution, on a matter of public concern.

Exceptions

The bill would not be applicable to the following causes of action:

- (1) against a governmental unit or an employee or agent of a governmental unit acting or purporting to act in an official capacity;
- (2) by a governmental unit or an employee or agent of a governmental unit acting in an official capacity to enforce a law to protect against an imminent threat to public health or safety; or
- (3) against a person primarily engaged in the business of selling or leasing goods or services if the cause of action arises out of a communication related to the person’s sale or lease of the goods or services.

Application for Show Cause Order

The bill permits a party to file an application for an order to show cause for expedited relief to dismiss the cause of action or part thereof. A party may file application within 60 days after a party is served with a petition or complaint, crossclaim, counterclaim, third-party claim, or other pleading that asserts a cause of action that falls under the act, or at a later time on a showing of good cause. The bill provides that on the filing of an order to show cause:

(1) all other proceedings between the moving party and responding party, including discovery and a pending hearing or motion may be stayed;

(2) on motion by the moving party, the court may stay an action or proceeding involving another party, or discovery by another party, if the hearing or ruling in that proceeding would adjudicate, or the discovery would relate to, an issue material to the order to show cause; and

(3) In determining whether to stay any proceedings, there would be a presumption that such a stay shall be granted.

Right to Appeal

A party maintains the right to appeal an order ruling on an order to show cause, and if so appealed, all proceedings between all parties in the action are stayed until the conclusion of the appeal. The court may permit limited discovery during a stay if a party shows that specific information is necessary to establish whether a party has satisfied or failed to satisfy a burden and the information is not reasonably available unless discovery is allowed.

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(a) the responding party fails to establish a prima facie case as to each essential element of the cause of action; or

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FISCAL IMPACT:

The Office of Legislative Services finds that this bill may result in some indeterminate net cost savings to the Judiciary by providing a process to dismiss a strategic lawsuit against public Participation (SLAPP). It may also act as a deterrent from such lawsuits being filed in the first place. However, it is unclear if the reduced court time related to these lawsuits would translate into any savings for the Judiciary.

According to the American Bar Association, strategic lawsuits against public participation are meritless lawsuits designed to chill constitutionally protected speech on matters of public concern.

LEGISLATIVE FISCAL ESTIMATE

[First Reprint]

ASSEMBLY, No. 4393

STATE OF NEW JERSEY 220th LEGISLATURE

DATED: JUNE 27, 2023

SUMMARY

- Synopsis:** “Uniform Public Expression Protection Act”; provides for expedited process for dismissal of “Strategic Lawsuit Against Public Participation” (SLAPP).
- Type of Impact:** Potential annual net State cost savings.
- Agencies Affected:** The Judiciary

Office of Legislative Services Estimate

| Fiscal Impact | <u>Annual</u> |
|---|----------------------|
| Potential Net State Cost Savings | Indeterminate |

- The Office of Legislative Services (OLS) finds that this bill may result in some indeterminate net cost savings to the Judiciary by providing a process to dismiss a strategic lawsuit against public participation (SLAPP). It may also act as a deterrent from such lawsuits being filed in the first place. However, it is unclear if the reduced court time related to these lawsuits would translate into any savings for the Judiciary.
- According to the American Bar Association, SLAPP suits are meritless lawsuits designed to chill constitutionally protected speech on matters of public concern.

BILL DESCRIPTION

This bill, titled the “Uniform Public Expression Protection Act,” would provide an order to show cause and expedited process to dismiss a “Strategic Lawsuit Against Public Participation” (“SLAPP”). The bill is based on the 2020 uniform act drafted and approved by the Uniform Law Commission, also known as the National Conference of Commissioners on Uniform State Laws.

FISCAL ANALYSIS

EXECUTIVE BRANCH

None received.

OFFICE OF LEGISLATIVE SERVICES

The OLS finds that this bill may result in some indeterminate net cost savings to the Judiciary by providing a process to dismiss a strategic lawsuit against public participation (SLAPP). It may also act as a deterrent from such lawsuits being filed in the first place. However, it is unclear if the reduced court time related to these lawsuits would translate into any savings for the Judiciary.

SLAPP suits are meritless lawsuits designed to chill constitutionally protected speech on matters of public concern. In a prior fiscal estimate for a similar bill, the Administrative Office of the Courts said that it anticipated a marginal fiscal impact on the Judiciary. As of April 2023, 32 states and the District of Columbia have anti-SLAPP laws.

Section: Judiciary

*Analyst: Anuja Pande Joshi
Senior Fiscal Analyst*

*Approved: Thomas Koenig
Legislative Budget and Finance Officer*

This legislative fiscal estimate has been produced by the Office of Legislative Services due to the failure of the Executive Branch to respond to our request for a fiscal note.

This fiscal estimate has been prepared pursuant to P.L.1980, c.67 (C.52:13B-6 et seq.).

Governor Murphy Signs Bipartisan Bill Protecting Against Lawsuits Designed to Suppress Free Speech

09/7/2023

'Uniform Public Expression Protection Act' Establishes Expedited Process for Dismissal of Strategic Lawsuits Against Public Participation (SLAPP)

TRENTON – Governor Phil Murphy today signed the 'Uniform Public Expression Protection Act' to protect people from meritless lawsuits intended to intimidate them for exercising free speech rights. Powerful entities and individuals often use lawsuits and litigation threats to punish and silence those who might speak unfavorably about them. The bipartisan legislation will enable defendants to seek the expedited dismissal of such lawsuits, commonly referred to as 'Strategic Lawsuits Against Public Participation' (SLAPP), which have historically been used against journalists, academics, advocates, and whistleblowers – among [others](#).

A SLAPP is generally used to silence individuals or organizations from publicly criticizing or bringing legitimate issues to light about an individual or entity with greater power and resources.

"For far too long, the powerful have abused the justice system to suppress free speech through illegitimate lawsuits," said **Governor Murphy**. "By pursuing meritless court cases, the powerful parties aim to silence their critics by making it impossible for those with fewer resources to spend the time and money necessary to legally defend themselves. This law will expedite the process to get these cases dismissed on behalf of the journalists, small businesses, activists, and countless others who have been unfairly targeted by these lawsuits the years."

If a SLAPP is initiated, the bill (S-2802/A-4393) now allows eligible defendants to file paperwork requiring the plaintiff to demonstrate the basis for the lawsuit and requiring the court consider the issues in an expeditious manner. This process will enable these kinds of cases to be dismissed quickly, and at less expense to the defendant, rather than being drawn in court.

In addition to the expedited timeline, other related legal proceedings may be paused until the request for an expedited dismissal is resolved. The bill also allows defendants in some cases to recover legal fees if the lawsuit is dismissed.

"People should be able to speak their mind on the issues that matter most to them without the fear of becoming ensnared in an expensive, time-consuming lawsuit," said **First Assistant Attorney General Lyndsay V. Ruotolo**. "The law signed by Governor Murphy today makes it much more difficult to use the legal system as a weapon, with the intent to bully individuals into silence. New Jersey is proud to become the latest state to enact a law that discourages, and creates a streamlined process to dismiss, baseless lawsuits that improperly target the lawful exercise of free speech."

With this bill signing, New Jersey joins a host of other states in adopting an anti-SLAPP law and becomes the sixth state to specifically enact particularly strong protections based on the Uniform Law Commission's 'Uniform Public Expression Protection Act.'

Sponsors of the legislation include Senator Joseph Lagana and Assemblyman Raj Mukherji, as well as Senator Jon Bramnick and Assembly members Carol Murphy and Kevin J. Rooney.

"Lawsuits should not be weaponized as a means of silencing someone speaking out about a controversial issue," said **Senator Lagana**. "This legislation will protect residents against frivolous, ill-intentioned lawsuits and insulate them from the financial hardships these cases can produce."

"Money and power shouldn't be tools to muzzle the voices of critics and whistleblowers," said **Assemblyman Mukherji**. "While our democracy thrives on free speech, frivolous SLAPP lawsuits aim to stifle that freedom. With this law, we're handing back the microphone and the pen and providing a powerful remedy so that journalists and citizens can confidently speak up without fear of unwarranted retribution."

"Many states throughout the country have enacted laws specifically aimed at discouraging SLAPP suits. Until today, those statutes did not exist in New Jersey," said **Senator Bramnick**. "Anti-SLAPP suit laws allow the defendant in a suit to file a motion that permits the court to dismiss the lawsuit for being without merit. This legislation will enact something similar in New Jersey so that people can exercise their First Amendment rights without the fear of getting bogged down in legal proceedings."

"Too often SLAPP suits have been used to silence criticism through costly and time-consuming legal proceedings. It's a shame that bad actors have exploited our legal system to effectively strip outspoken New Jersey residents of their First Amendment rights," said **Assemblywoman Murphy**. "Today, we are taking a stand by expediting the dismissal of these lawsuits, doing away with this intimidation tactic, and protecting freedom of speech in our state."

"I am a proud champion of diverse discourse. New Jersey must discourage those who weaponize the legal system to intimidate detractors, because it impedes healthy debate," said **Assemblyman Rooney**. "Free speech in New Jersey is protected under the Constitution, but with this bill signing, the law will stand up for the vocal citizens who are too often silenced by money and power."

"I am thrilled that New Jersey has enacted the Uniform Public Expression Protection Act (UPEPA), a strong anti-SLAPP bill that protects filmmakers, journalists, and everyday citizens from attacks on their First Amendment rights," said **Charles Rivkin, Chairman and CEO of the Motion Picture Association**. "Under the leadership of Governor Murphy and the state legislature, New Jersey has become a major hub of film and television production, making it ever more urgent and important that the state protect the principles of free speech and artistic freedom on which a thriving creative ecosystem depends. Thank you, Gov. Murphy and the bill sponsors, Senator Joseph Lagana and Assemblyman Raj Mukherji, for working to enact UPEPA. On behalf of the MPA and our member studios, we look forward to further strengthening our excellent relationship with the Garden State."

"The right to free speech is a cornerstone of our democracy, and we commend Governor Murphy and the bill sponsors for protecting this foundational right by making this bill law," said **ACLU of New Jersey Executive Director Amol Sinha**. "This bill will help protect the public against serious and continuing threats to free speech in New Jersey by limiting the harms people can face for speaking out on important public issues. The ACLU-NJ fights for New Jerseyans' rights every day and we are proud to say that our rights have stronger protection today."

"The enactment of the 'Uniform Public Expression Protection Act' represents a significant milestone for the State of New Jersey," said **Peggy Arbitell, Executive Director of the New Jersey Press Association**. "This legislation, which enables early resolution of Strategic Lawsuits Against Public Participation (SLAPP), is designed to thwart lawsuits intended to intimidate or punish those engaged in constitutionally protected activity. The New Jersey Press Association strongly and enthusiastically supports this legislation, which now places New Jersey with the majority of States that recognize the importance of robust anti-SLAPP laws."

"Anti-SLAPP laws provide essential protections for journalists and news organizations to be able to quickly dismiss meritless lawsuits from powerful parties seeking to intimidate, punish, or chill their reporting," said **Lisa Zycherman, Deputy Legal Director of Reporters Committee for Freedom of the Press**. "Journalists must be able to report stories about matters of public interest without fear that the subjects of their coverage will target them or their newsroom with costly, baseless legal proceedings. These kinds of protections are vital to preserving the unflinching journalism that informs communities, exposes wrongdoing, and holds public figures and officials accountable."

"This new law will protect the constitutional rights of those who engage in public protest or who advocate on issues of public importance. Too often, unjust lawsuits known as Strategic Lawsuits Against Public Participation (SLAPP), are filed not for the purpose of seeking justice but to punish or prevent people from exercising their constitutional rights," said **Patric M. Giordano, Esq., President of the New Jersey Association for Justice**. "We thank Governor Murphy for supporting the right to free speech and signing this important legislation into law. We also thank Senators Lagana and Bramnick, Assemblymen Mukherji and Rooney, and Assemblywoman Murphy for shepherding this important affirmation of constitutional rights through the legislative process."

"After unanimous passage in both the Assembly and Senate, New Jersey municipalities appreciate the Governor signing this legislation that protects the local government's ability function, without hampering the ability for residents to communicate, and ensuring that the threat of frivolous lawsuits is greatly diminished," **said Michael Cerra, Executive Director, New Jersey League of Municipalities.**

"We thank Governor Murphy for signing this important legislation that will protect the rights of communities to fight back against development proposals that have a detrimental environmental impact on their neighborhoods," **said Allison McLeod, Policy Director for the New Jersey League of Conservation Voters.** "Unscrupulous developers have long utilized SLAPP suits as a way of silencing local voices. This law will enable community groups to voice their opinions on critical issues involving warehouse sprawl, water quality, and other conservation matters."