

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 2971 Session of
1994

INTRODUCED BY GEORGE, MIHALICH, STEELMAN, M. COHEN, LEVDANSKY,
CLARK, FAIRCHILD, BAKER, HALUSKA, DeLUCA, PISTELLA,
MANDERINO, MUNDY, MAITLAND AND TRELLO, JUNE 22, 1994

REFERRED TO COMMITTEE ON CONSERVATION, JUNE 22, 1994

AN ACT

1 Providing for the protection of public participation in
2 environmental matters, for a motion to strike and for certain
3 damages.

4 The General Assembly finds and declares as follows:

5 (1) This Commonwealth has benefited from the
6 participation of its citizens in the making of environmental
7 law and regulations.

8 (2) There has been a disturbing increase in lawsuits
9 brought primarily to chill the valid exercise of the
10 constitutional rights of freedom of speech and petition for
11 the redress of grievances. It is in the public interest to
12 encourage continued participation in matters of public
13 significance, and this participation should not be chilled
14 through abuse of the judicial process.

15 (3) The threat of personal damages and litigation costs
16 can be and has been used as a means of harassing,
17 intimidating or punishing individuals, unincorporated
18 associations, not-for-profit corporations and others who have

involved themselves in public affairs.

(4) The interests of the citizens of this Commonwealth are served by stopping suits seeking to undermine citizen participation in the making of State and local environmental policy.

(5) It is the policy of this Commonwealth that the rights of citizens to participate freely in the public process must be safeguarded with great diligence. The laws of this Commonwealth must provide the utmost protection for the free exercise of speech, petition and association rights, particularly where such rights are exercised in a public forum with respect to issues of public concern.

The General Assembly of the Commonwealth of Pennsylvania hereby enacts as follows:

Section 1. Short title.

This act shall be known and may be cited as the Environmental Policy Participation Law.

Section 2. Definitions.

The following words and phrases when used in this act shall have the meanings given to them in this section unless the context clearly indicates otherwise:

"Act in furtherance of a person's right of petition or free speech under the United States Constitution or the Constitution of Pennsylvania in connection with a public issue." Any written or oral statement or writing made before a legislative, executive or judicial proceeding, or any other official proceeding authorized by law; any written or oral statement or writing made in connection with an issue under consideration or review by a legislative, executive or judicial body, or any other official proceeding authorized by law; or any written or

1 oral statement or writing made in a place open to the public or
2 a public forum in connection with an issue of public interest.

3 "Action involving public petition and participation." An
4 action, claim, cross-claim or counterclaim for damages that is
5 brought by a public applicant or permittee and is materially
6 related to any efforts of the defendant to report on, comment
7 on, rule on, challenge or oppose such application or permission
8 in a matter related to environmental policy.

9 "Communication." Any statement, claim, allegation in a
10 proceeding, decision, protest, writing, argument, contention or
11 other expression.

12 "Government agency." The Federal Government, the
13 Commonwealth and all of its departments, commissions, boards,
14 agencies and authorities, and all political subdivisions and
15 their authorities.

16 "Public applicant or permittee." Any person who has applied
17 for or obtained a permit, zoning change, lease, license,
18 certificate or other entitlement for use or permission to act
19 from any government body, or any person with an interest,
20 connection or affiliation with such person that is materially
21 related to such application or permission.

22 Section 3. Action for damages.

23 In an action involving public petition and participation,
24 damages may only be recovered if the plaintiff, in addition to
25 all other necessary elements, shall have established by clear
26 and convincing evidence that any communication which gives rise
27 to the action was made with knowledge of its falsity or with
28 reckless disregard of whether it was false, where the truth or
29 falsity of such communication is material to the cause of action
30 at issue.

1 Section 4. Motion to strike.

2 (a) General rule.--A cause of action against a person
3 arising from any act of that person in furtherance of the
4 person's right of petition or free speech under the United
5 States Constitution or the Constitution of Pennsylvania in
6 connection with a public issue shall be subject to a special
7 motion to strike unless the court determines that the plaintiff
8 has established that there is a probability that the plaintiff
9 will prevail on the claim. In making its determination, the
10 court shall consider the pleadings and supporting and opposing
11 affidavits stating the facts upon which the liability or defense
12 is based.

13 (b) Determination not evidence.--If the court determines
14 that the plaintiff has established a probability that he will
15 prevail on the claim, neither that determination nor the fact of
16 that determination shall be admissible in evidence at any later
17 stage of the case, and no burden of proof or degree of proof
18 otherwise applicable shall be affected by that determination.

19 (c) Time of filing.--The special motion may be filed within
20 60 days of the service of the complaint or, in the court's
21 discretion, at any later time upon terms it deems proper.

22 Section 5. Attorney fees.

23 If a person successfully resists an action involving public
24 petition or participation under this act, that person shall be
25 awarded reasonable attorney fees and the costs of litigation. If
26 the person prevails in part, the court may award reasonable
27 attorney fees and costs of litigation or an appropriate portion
28 thereof.

29 Section 6. Construction of act.

30 Nothing in this act shall be construed to limit any

1 constitutional, statutory or common-law protections of
2 defendants to actions involving public petition and
3 participation.

4 Section 7. Repeals.

5 All acts and parts of acts are repealed insofar as they are
6 inconsistent with this act.

7 Section 8. Effective date.

8 This act shall take effect immediately.