

# New York State Assembly Judiciary Committee Chair Sponsors Significant Expansion and Toughing of New York's Anti-SLAPP Law

By M.J. Williams

On June 7, 2012, Assemblywoman Helene E. Weinstein, who chairs the New York State Assembly Committee on the Judiciary, introduced [legislation](#) that would significantly reform New York's anti-SLAPP statute. SLAPP, an acronym for "strategic lawsuits against public participation," refers to frivolous lawsuits calculated to silence citizens who express their views on matters of public interest.

New York was one of the first states to enact anti-SLAPP legislation (New York Civil Rights Law §§ 70-A and 76-A; CPLR 3211(g)-(h), enacted in 1992). However, according to Assemblywoman Weinstein's findings, New York's law has failed in two important ways to safeguard public participation against the threat of retaliatory lawsuits. As drafted and interpreted the courts, the current law's scope is so narrow that it has failed to protect New York citizens from frivolous suits commenced solely to discourage their exercise of free speech or petition.

The law's principal remedy, the award of costs for attorneys' fees to SLAPP suit defendants, has also proven to be toothless, as shown in Assemblywoman Weinstein's findings. The legislation sponsored by Assemblywoman Weinstein, [Bill No. A10594](#), specifically addresses these failings.

First, the bill expands the law's scope. Currently, the statute defines a SLAPP suit as one related to "a public applicant or permittee." Assemblywoman Weinstein's explanation of the bill states that courts have strictly applied the law solely to cases based on controversies involving public permitting, generally in the context of real estate development. Each year, however, many frivolous lawsuits filed to chill free speech fall outside the anti-SLAPP law's ambit because they are not directly linked to the public "permit" process.

Assemblywoman Weinstein's bill is intended to reform the anti-SLAPP statute so that it provides protection for all free speech and public participation on matters of public

concern. Specifically, the bill amends the definition of an "action involving public petition and participation" in Section 76-A of the Civil Rights Law to refer to claims based on

1. Any communication in a place open to the public or a public forum in connection with an issue of public concern; or
- ii. Any other lawful conduct in furtherance of the exercise of the constitutional right of free speech in connection with an issue of public concern, or in furtherance of the exercise of the constitutional right of petition.

**Weinstein's bill advances a notably more streamlined definition of a SLAPP suit, while providing equally robust protections for public participation.**

According to Assemblywoman Weinstein, so revised, New York's anti-SLAPP legislation will better accomplish its original purpose, namely to 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." L.1992 ch.767.

The bill also toughens the law's penalties by making mandatory the award of attorneys' fees to the victims of SLAPP suits brought in bad faith. Currently, this remedy is discretionary only. Assemblywoman Weinstein's findings revealed that while the Legislature originally intended the award of fees and costs to undo the threat of costly defense against frivolous suits, courts have all but failed to use their discretionary power to grant the remedy. The bill revises Section 70-A of the Civil Rights Law to direct that costs and attorneys' fees "shall be recovered upon a demonstration that [a SLAPP suit] was commenced or continued without a substantial basis in fact or law." Together, the two amendments are meant to reboot New York's protections against the chilling effect and financial hardship of abusive litigation without discouraging meritorious suits.

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Studies of more robust anti-SLAPP laws were brought to the attention of Assemblywoman Weinstein's staff prior to her introducing the new legislation. Currently, 27 U.S. states and territories have anti-SLAPP statutes; of those, 22 make an award of attorneys' fees mandatory. The studies provided to Assemblywoman Weinstein pointed out, for instance, that more awards of attorneys' fees were granted to SLAPP suit defendants in the inaugural year of Texas's anti-SLAPP statute than in the nineteen years since New York enacted its law.

The bill would bring New York's law in line with legislation common in the rest of the county. In a departure,

however, from the recently passed statutes in Texas (H.B. No. 2973, effective 2011) and Washington State (RCW 4.24.525, effective 2010) and the often lauded, and frequently litigated, law in California (Cal. Civ. Proc. Code § 425.16, effective 1993), Assemblywoman Weinstein's bill advances a notably more streamlined definition of a SLAPP suit, while providing equally robust protections for public participation.

While already brought to the Assembly by the Committee on Rules, at Assemblywoman Weinstein's request, and referred to the Judiciary Committee, the bill has not yet been introduced in the New York Senate.

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