

COMMENTS ON HB281
PRESENTED TO THE HOUSE JUDICIARY COMMITTEE
BY THE SIERRA CLUB
PENNSYLVANIA CHAPTER
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SLAPP stands for Strategic Lawsuits Against Public Persons. It is not a legal cause of itself, but instead defines a class of conventional lawsuits filed for a different reason: an industry is not happy with criticism of its environmental practices, it will sue the tortors to inhibit, limit, or silence opposition.

Typical causes of action are trespass, nuisance, harassment, slander, libel, and interference with contract. These actions must have their own legitimate criteria though their purpose is to silence others. Trespass, for example, requires that the violator be on the realty of another, without permission. What makes it a SLAPP lawsuit is the motivation to silence the person, rather than remedy the wrong. The lawsuits are usually filed before local courts or in the county courts of common pleas.

The consequences of being sued in this type of action are that a person may lose and be forced to pay damages. The real harm, however, is that even if they are found not liable they must pay legal bills. Polluters can silence peaceful and legitimate protestors because of the costs, whether or not they ever win the lawsuit.

HB281, sponsored by Rep. Camille "Bud" George is a bill that would offer some protection by giving immunity from suit to persons who communicate environmental problems to government for purposes of getting the government to act upon the problem. The bill also included a special mechanism for getting this issue resolved before the lawsuit progresses. It provided for attorneys' fees and the right of government intervention. The Sierra Club is in favor of this bill as introduced.

Unfortunately, HB281 was amended in Committee with a section that would allow the Environmental Hearing Board (which never hears SLAPP suits) to award costs, including attorney fees, if it determines that "an appeal is frivolous or taken solely for delay or that the conduct of the Appellant is dilatory or vexatious."

We cannot support this new section for the following reasons: This new provision would force citizens and public interest groups who are forced to file appeals in 30 days and who often do not have or cannot pay lawyers. Industries appealing DEP actions can afford to fully prepare pleadings that pass the legal "frivolous" test. Citizens, on the other hand, do not read the Pennsylvania Bulletin regularly (where Notice of these actions appear), do not understand the complexities of the legal system well enough to sound knowledgeable, and must spend something within the short time allotted or forever lost their rights of appeal. Thus, a good



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could have offered some protection for citizens before local and county courts now
a provision that limits citizen rights before the Environmental Hearing Board.
The Sierra Club PA Chapter urges that HB281 be amended to remove the provision
adding the bill to the Environmental Hearing Board.