

AMENDED IN ASSEMBLY MARCH 18, 2016

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

ASSEMBLY BILL

No. 2026

Introduced by Assembly Member Hadley
(Coauthor: Assembly Member Baker)

February 16, 2016

An act to ~~amend Section 21001.1 of~~ *add Section 21175* to the Public Resources Code, relating to environmental quality.

LEGISLATIVE COUNSEL'S DIGEST

AB 2026, as amended, Hadley. California Environmental Quality ~~Act~~. *Act: judicial challenge: identification of contributors.*

The California Environmental Quality Act requires a lead agency, as defined, to prepare, or cause to be prepared, and certify the completion of an environmental impact report on a project that it proposes to carry out or approve that may have a significant effect on the environment, or to adopt a negative declaration if it finds that the project will not have that effect. ~~Existing law declares the policy of the state that a project to be carried out by a public agency be subject to the same level of review and consideration under the act as that required of private projects required to be approved by public agencies.~~ *The act authorizes specified entities to file and maintain with a court an action or proceeding to attack, review, set aside, void, or annul an act of a public agency on grounds of noncompliance with the requirements of the act.*

~~This bill would make a technical, nonsubstantive change to those provisions:~~

This bill would require a plaintiff or petitioner, in an action brought pursuant to the act, to disclose the identity of a person or entity that contributes in excess of \$1,000, as specified, toward the plaintiff's or

petitioner's costs of the action. The bill also would require the plaintiff or petitioner to identify any pecuniary or business interest related to the project or issues involved in the action of any person or entity that contributes in excess of \$1,000 to the costs of the action, as specified. The bill would provide that a failure to comply with these requirements may be grounds for dismissal of the action by the court.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. (a) *The Legislature finds and declares all of the*
2 *following:*
- 3 (1) *The California Environmental Quality Act (Division 13*
4 *(commencing with Section 21000) of the Public Resources Code)*
5 *facilitates the maintenance of a quality environment for the people*
6 *of the state through identification of significant effects on the*
7 *environment caused by a proposed project, consideration of*
8 *alternatives, and implementation of feasible mitigation measures*
9 *to reduce those effects.*
- 10 (2) *The act is premised on transparency in decisionmaking*
11 *through public dissemination of information about a proposed*
12 *project's effect on the environment.*
- 13 (3) *The act empowers the public to challenge a project in court*
14 *for failure to fully comply with the act's exhaustive disclosure and*
15 *mitigation requirements.*
- 16 (4) *Various entities are increasingly using litigation pursuant*
17 *to the act for competitive purposes to either frustrate a competitor's*
18 *project or to extract concessions from a project proponent.*
- 19 (5) *Despite the focus on transparency and public disclosure in*
20 *the decisionmaking process, shadow groups funded by unknown*
21 *backers often threaten and bring litigation challenging proposed*
22 *projects without being required to disclose who is funding the*
23 *litigation or what financial interests those entities have related to*
24 *the proposed project.*
- 25 (6) *Project opponents sometimes strategically use litigation to*
26 *delay a project past its point of economic viability, thereby using*
27 *litigation to stop projects that could not otherwise be stopped*
28 *during the decisionmaking process.*

1 (7) California Rules of Court require the disclosure of entities
2 that fund the preparation and submission of amicus briefs to the
3 court.

4 (8) The state and public have a compelling interest in the
5 disclosure of the identities of entities that fund litigation under the
6 act so they can better understand the identities of those
7 organizations participating in the public decisionmaking process,
8 determine whether the petitioner or plaintiff may be suing for
9 competitive or other nonenvironmental purposes, and protect
10 scarce judicial resources by deterring entities from using lawsuits
11 for competitive or other nonenvironmental purposes.

12 (9) The courts have a compelling interest in disclosure to
13 determine whether the plaintiff or petitioner is seeking to advance
14 environmental, nonenvironmental, or a mix of environmental and
15 nonenvironmental interests in filing an action pursuant to the act.

16 (b) It is the intent of the Legislature to require plaintiffs and
17 petitioners bringing an action pursuant to the act to disclose those
18 persons or entities who make contributions to fund the preparation
19 of the petition and subsequent actions or proceedings and any
20 financial interests they may have related to the proposed project.

21 SEC. 2. Section 21175 is added to the Public Resources Code,
22 to read:

23 21175. (a) In an action or proceeding to attack, review, set
24 aside, void, or annul any act or decision of a public agency on the
25 grounds of noncompliance with this division, the plaintiff or
26 petitioner shall include an affidavit identifying every person or
27 entity who made a monetary contribution of one thousand dollars
28 (\$1,000) or more, or committed to contribute one thousand dollars
29 (\$1,000) or more, for the preparation of the petition and subsequent
30 action or proceeding.

31 (b) The plaintiff or petitioner shall have a continuing obligation
32 throughout the course of the proceeding to identify any person or
33 entity that has made a single or multiple contributions or
34 commitments, the sum of which is \$1,000 or more, and that were
35 intended to fund the action or proceeding.

36 (c) The disclosures required pursuant to subdivisions (a) and
37 (b) shall also include the identity of any pecuniary or business
38 interest that the person or entity has related to the proposed
39 project.

1 (d) A plaintiff or petitioner may request the court’s permission
2 to withhold the public disclosure of a contributor. The court may
3 grant the request if it finds that the public interest in keeping that
4 information confidential clearly outweighs the public interest in
5 disclosure.

6 (e) A court may, upon its own motion or the motion of any party,
7 take any action necessary to compel compliance with the
8 requirements of this section, up to and including dismissal of the
9 action or proceeding.

10 (f) An individual contributing funds to file an action or
11 proceeding pursuant to this division in his or her individual
12 capacity, and not as a representative for an organization or
13 association, has the right to limit disclosure of his or her personal
14 information to an in-camera review by the court.

15 (g) The information disclosed pursuant to this section may be
16 used to enable a court to determine whether the financial burden
17 of private enforcement supports the award of attorneys’ fees in
18 actions or proceedings brought to enforce this division.

19 ~~SECTION 1. Section 21001.1 of the Public Resources Code~~
20 ~~is amended to read:~~

21 ~~21001.1. The Legislature further finds and declares that it is~~
22 ~~the policy of the state that projects to be carried out by public~~
23 ~~agencies be subject to the same level of review and consideration~~
24 ~~under this division as that required of private projects required to~~
25 ~~be approved by public agencies.~~