SENATE JUDICIARY COMMITTEE
Senator Thomas Umberg, Chair
2023-2024 Regular Session

SB 393 (Glazer)
Version: April 10, 2023
Hearing Date: May 2, 2023
Fiscal: No
Urgency: No
AM

SUBJECT

California Environmental Quality Act (CEQA): judicial challenge: identification of contributors: housing projects

DIGEST

This bill requires a plaintiff or petitioner in an action brought pursuant to CEQA relating to a housing development project, as defined, to disclose the identity of a person or entity that contributes in excess of $5,000 toward to cost of the action, as provided. The bill would provide that a failure to comply with these requirements may be grounds for dismissal of the action by the court. The bill also prohibits an action or proceeding from being brought in the court to attack, review, set aside, void, or annul an act of a public agency for housing projects, included in a master environmental impact report or other plan or project already approved following the completion of an environmental review, on grounds of noncompliance with CEQA, as specified, and that further environmental reviews are not subject to this provision.

EXECUTIVE SUMMARY

The author states this bill is intended to provide more transparency into the CEQA litigation process by requiring plaintiffs or petitioners to disclose the identities of any donor who donates more than $5,000 towards a case relating to a housing development project. This bill is similar to several other bills that have been introduced over the years, including the author's SB 1341 (Glazer, 2018); however, they have all either not been set for a hearing or failed to get out of the committee of first referral. (*See* Prior Legislation, below.)

The bill is author sponsored and supported by several organizations, including those representing supportive housing, the rental housing industry, and realtors. The bill is opposed by various environmental and labor organizations, including Sierra Club California and SEIU California. The bill passed the Senate Environmental Quality Committee on a vote of 6 to 0.

PROPOSED CHANGES TO THE LAW

Existing state law:

1) Requires lead agencies with the principal responsibility for carrying out or approving a proposed discretionary project to prepare a negative declaration, mitigated declaration, or environmental impact report (EIR) for this action, unless the project is exempt from CEQA (CEQA includes various statutory exemptions, as well as categorical exemptions in the CEQA Guidelines). (Pub. Res. Code § 21100 et seq.)[1]

2) Sets requirements relating to the preparation, review, comment, approval and certification of environmental documents, as well as procedures relating to an action or proceeding to attack, review, set aside, void, or annul various actions of a public agency on the grounds of noncompliance with CEQA. (§ 21165 et seq.)

3) Authorizes judicial review of CEQA actions taken by public agencies, following the agency's decision to carry out or approve the project, and specifies certain time periods in which an action must be instituted depending on the type of claim alleged. (§ 21167.)

4) Provides that upon motion, a court may award attorney fees to a successful party against one or more opposing parties in any action which has resulted in the enforcement of an important right affecting the public interest if:
    a) a significant benefit, whether pecuniary or nonpecuniary, has been conferred on the general public or a large class of persons;
    b) the necessity and financial burden of private enforcement, or of enforcement by one public entity against another public entity, are such as to make the award appropriate; and
    c) such fees should not in the interest of justice be paid out of the recovery, if any. (Code Civ. Proc. § 1021.5.)

This bill:

1) Requires a plaintiff or petitioner in an action brought pursuant to CEQA relating to a housing development project, as defined, to disclose the identity of a person or entity that contributes in excess of $5,000 toward to cost of the action.
    a) Provides that the plaintiff or petitioner has a continuing obligation throughout the course of the proceedings to identify any person or entity that has made a single or multiple contributions within seven days of receiving the contribution.
    b) Requires the plaintiff or petitioner to use reasonable efforts to identify the actual persons or entities that are the true source of the contributions.

[1] All further references are to the Public Resources Code unless otherwise indicated.

c) Defines housing development projects as a use consisting of any of the following:
    i. residential units only;
    ii. mixed-use developments consisting of residential and nonresidential uses with at least two-thirds of the square footage designated for residential use; or
    iii. transitional housing or supportive housing.

2) Requires the disclosure to include the exact total amount contributed and any pecuniary or business interest related to the project of any person or entity that contributes that contributes in excess of $5,000 toward to cost of the action.

3) Authorizes a plaintiff or petitioner to request the court's permission to withhold the public disclosure of a contribution, and authorizes the court to grant the request if it finds that the public interest in keeping that information confidential clearly outweighs the public interest in disclosure.

4) Authorizes the court to, on its own motion or motion of any party, take any action necessary to compel compliance with these provisions, up to and including dismissal of the action by the court.

5) Individuals contributing funds have the right to limit disclosure of the individual's personal information to an in-camera review by the court.

6) Authorizes the information disclosed to be used by a court to determine whether the financial burden of private enforcement supports the award of attorney's fees under CEQA.

7) Prohibits an action of proceeding from being brought to attack, review, set aside, void, or annul an act or decision of a public agency for housing projects that are included in a master environmental impact report or other plan or project already approved following the completion of an environmental review on the grounds of noncompliance with CEQA.
    a) Further environmental reviews by a public agency for housing projects must continue to comply with all obligations under CEQA related to environmental review, including public notice and comment requirements.
    b) Further environmental reviews by a public agency for housing projects are subject to an action or proceeding to attack, review, set aside, void, or annul an act or decision of a public agency for noncompliance with CEQA.

COMMENTS

1. Stated need for the bill

The author writes:

> Under the California Environmental Quality Act (CEQA), individuals and entities can file lawsuits anonymously and without disclosing their donors' identities or interests. As a result, many housing projects in particular face legal challenges from interests that have ulterior motives other than the environment. Unfortunately, an affordable housing project located in my district has been one of the latest victims of this abuse. This project will provide 130 units of affordable housing and an estimated 13,000 families are on the waiting list. However, its construction has been stalled indefinitely from repeated challenges from a group called Save Livermore Downtown, despite the trial court and the appeals court affirming that the environmental concerns are "almost utterly without merit." As a result, the project has lost $65 million in funding from the Low Income Housing Tax Credit Program. This case is not alone and there are many examples of such CEQA abuses across the state.
>
> According to the California Department of Housing and Community Development (HCD), the state must build over 2.5 million homes over the next eight-year cycle. No less than one million of those homes must be affordable to lower-income households. CEQA abuses can hinder the state from meeting its housing goals and local jurisdictions from meeting their Regional Needs Housing Assessment (RHNA) numbers. In order to provide more transparency into the CEQA litigation process, this bill would require plaintiffs or petitioners to disclose the identities of any donor who donates more than $5,000 towards the case. This will provide the court and the public with a better understanding of who is contributing to these efforts that, in many cases, deprive California residents from needed housing.

2. CEQA generally

Enacted in 1970, CEQA requires state and local agencies to follow a set protocol to disclose and evaluate the significant environmental impacts of proposed projects and to adopt feasible measures to mitigate those impacts. CEQA itself applies to projects undertaken or requiring approval by public agencies, and, if more than one agency is involved, CEQA requires one of the agencies to be designated as the "lead agency." The environmental review process required by CEQA consists of: (1) determining if the activity is a project; (2) determining if the project is exempt from CEQA; and (3) performing an initial study to identify the environmental impacts and, depending on the findings, prepare either a Negative Declaration (for projects with no significant impacts), a Mitigated Negative Declaration (for projects with significant impacts but

that are revised in some form to avoid or mitigate those impacts), or an EIR (for projects with significant impacts).

An EIR must accurately describe the proposed project, identify and analyze each significant environmental impact expected to result from the proposed project, identify mitigation measures to reduce those impacts to the extent feasible, and evaluate a range of reasonable alternatives to the proposed project. Before approving any project that has received environmental review, an agency must make certain findings pertaining to the project's environmental impact and any associated mitigation measures. If mitigation measures are required or incorporated into a project, the public agency must adopt a reporting or monitoring program to ensure compliance with those measures. To enforce the requirements of CEQA, a civil action may be brought under several code sections to attack, review, set aside, void, or annul the acts or decisions of a public agency for noncompliance with the act.

Unlike other environmental laws specific to air resources, water resources, or the control of toxic substances, there is no statewide bureaucracy charged with enforcement of CEQA. Rather, it is enforced through citizen participation and litigation if necessary. Arguably, this makes the implementation of CEQA more efficient and expeditious than if a state agency were created to administer the law. Thus, CEQA litigation could more appropriately be characterized as mere enforcement.

"CEQA operates, not by dictating proenvironmental outcomes, but rather by mandating that 'decision makers and the public' study the likely environmental effects of contemplated government actions and thus make fully informed decisions regarding those actions. … In other words, CEQA does not care what decision is made as long as it is an informed one." (*Citizens Coalition Los Angeles v. City of Los Angeles* (2018) 26 Cal. App. 5th 561, 577.)

3. Bill is in response to a situation that has arisen in author's district

The author indicates this bill is in response to a situation that occurred in his district. The Senate Environmental Quality Committee analysis provides background on the situation:

> Back in 2004, Livermore adopted a general plan and a downtown specific plan for which it completed and certified an EIR. A subsequent EIR (SEIR) was certified in 2009, after the city amended its downtown specific plan to increase the amount of development allowed. Fast-forward to January 2018, when the city approved a plan for redeveloping city-owned sites in its downtown core to have a public park, commercial retail buildings, cultural facilities, multi-family workforce housing, a public parking garage, and a hotel. In May 2018, Eden Housing, a private developer, was selected to build 130 units of affordable housing as a part of that downtown core and an addendum to the 2009 SEIR was

prepared in 2019, followed by two further addenda in 2020 when the project was modified.

The city approved the project in May 2021, finding it was both consistent with the SEIR that had been certified and was an infill development project.

A group opposing the project, Save Livermore Downtown (SLD), filed suit under CEQA in June 2021, alleging the city's environmental study for the project was inadequate and not in compliance with the city's downtown specific plan. According to news reports, SLD has spent over $1 million on mailers and advertising in opposition to the affordable housing project.

In February 2022, the Alameda County Superior Court rejected the lawsuit, stating in part the lawsuit was "almost utterly without merit." While the city and Eden Housing won at the trial court level, Eden Housing stated at the time the delay had forced it to return $68 million in low-income housing tax credits.

SLD appealed the decision, but in December 2022, a three justice panel at the California 1st District Court of Appeal voted unanimously to uphold the Alameda County Superior Court decision. The court found the project was indeed exempt from CEQA review and had met all of the tests in statute to qualify for the exemption. In its ruling upholding the trial court decision, the appeals court wrote:

> "With the trial court we conclude, '[t]his is not a close case.' SLD's contentions regarding the project's consistency with the Downtown Specific Plan and its CEQA arguments lack merit, so much so that the inherent weakness of these claims further supports the trial court's finding that SLD brought this action to delay the project." [*Save Livermore Downtown v. City of Livermore* (2022) 87 Cal.App.5th 1116, 1138.]

On January 12, 2023, SLD filed a request to have the justices rehear their arguments and is awaiting a decision.[2]

4. <u>The bill's disclosure provisions may very likely violate the First Amendment of the U.S. Constitution</u>

The First Amendment prohibits the government from "abridging the freedom of speech, or of the press; or the right of people peaceably to assemble, and to petition the Government for a redress of grievances." The Court has "long understood as implicit in the right to engage in activities protected by the First Amendment a corresponding

[2] Sen. Environmental Quality Comm. analysis of SB 393 (2023-24 reg. session) as introduced Feb. 9, 2023 at p. 3-4.

right to associate with others." (*Roberts v. U.S. Jaycees* (1984) 468 U.S. 609, 622.) The Court has noted that "compelled disclosure of affiliation with groups engaged in advocacy may constitute as effective a restrain on freedom of association as [any other] forms of governmental action" and that there is a "vital relationship between freedom to associate and privacy in one's associations." (*NAACP v. Alabama ex. rel Patterson* (1958) 357 U.S. 499, 462.) Under First amendment jurisprudence, a law can be challenged in two ways. It can be challenged as facially violating the First Amendment, meaning the law as written (on its face) is unconstitutional, or it can be argued that the law as-applied to a particular litigant violates the First Amendment. A law found to facially violate the First Amendment will be struck down entirely, whereas a law found to violate the First Amendment as-applied would only be invalidated as it pertains to that specific litigant asserting the law violates their First Amendment rights.

In a recent U.S. Supreme Court Case, *Americans for Prosperity Foundation v. Bonta* ((2021) 141 S.Ct. 2373.), the Court held that the California Attorney General (AG) requirement that charities disclose their Schedule B to Form 990 when registering with the state facially violated the First Amendment. Schedule B requires non-profit organizations to disclose the names and addresses of donors who have contributed more than $5,000 in a particular tax year or, in certain cases, more than 2% of an organization's total contributions and is filed with the federal government. The Court held that the standard of review to be applied in compelled disclosure situations is an exacting scrutiny standard, and wrote that under this standard there must be a "'substantial relation between the disclosure requirement and a sufficiently important governmental interest,' and that the disclosure requirement be narrowly tailored to the interest it promotes." (*Id*. at 2383-85; internal quotation marks omitted.) The court also stated that a law may be facially challenged and invalidated "as overbroad if a substantial number of its applications are unconstitutional." (*Id.* at 2387.)

The Court found that preventing fraud by charities was a substantial governmental interest, stating that there was "no doubt that California has an important interest in preventing wrongdoing by charitable organizations."(*Id*. at 2387.) However, the court found that the disclosure requirement was not narrowly tailored, pointing to the fact that the District Court found no concrete example of pre-investigation collection advancing the AG's enforcement efforts. (*Id*. at 2386.) The Court noted that there were other methods available to the AG to collect such information, such as a subpoena or audit letter. (*Ibid*.) The AG argued to the Court that the disclosure requirement did not result in any widespread chilling of association rights, that the disclosures were confidential, and that there were no burdens placed on the donors because tax-exempt charities already provide their Schedule B form to the Internal Revenue Service. (*Id*. at 2387-88.) The Court found these arguments unpersuasive. The Court concluded that the protections of the First Amendment as it relates to freedom of association "are triggered not only by actual restrictions" on a person's ability to join with other people to further a shared goal but also when there is a risk of a chilling effect on association. (*Id*. at 2389.)

A California appellate court recently applied the holding in *Americans for Prosperity Foundation* to a discovery request by the Public Utility Commission's (PUC) Public Advocate's Office (PAO) on Southern California Gas Company (SCG) related to whether the political activities of SCG are funded by SCG's shareholders, which is permissible, or ratepayers, which is not permissible under existing law. The court held that the discovery request violated the First Amendment as applied to SCG because it infringed upon their freedom of association rights. (*Southern California Gas Company v. Public Utilities Commission* (2023) 87 Cal.App5th 324.) The court applied the exacting scrutiny standard as laid out under *American for Prosperity Foundation* and stated that a party objecting to a discovery request based on First Amendment rights has to make a prima facie showing that the enforcement of the request will result in harassment, membership withdrawal, or discouragement of new members or other consequences that objectively indicate an impact on or "chilling" of the members' association rights. (*Id*. at 342-43.) If the petitioner can make the *prima facie* showing the burden shifts to the government to demonstrate that the disclosure serves a compelling government interest and is the least restrictive means of obtaining the requested information. (*Id*. at 343.) The court stated that "a governmental entity seeking discovery must show that the information sought is highly relevant to the claims or defenses in the proceeding at hand" and that the information is essential to perform its duties. (*Id*. at 344-45.) Here, much like in the *American for Prosperity Foundation* case, the information to be disclosed would remain confidential but this was found unpersuasive by the court. They noted confidentiality was irrelevant to the matter because the evidence provided by SCG "demonstrates that the disclosure to the PAO itself would chill third parties from associating with the utility." (*Id*. at 344.) SCG made this demonstration by providing evidence that disclosure would have a chilling effect on the ability of SCG to engage in activities that are lawful, and submitted declarations from organizations stating that the disclosure required by PAO would dissuade them from communicating or contracting with SCG.

It is probable that the bill would survive the first part of an exacting scrutiny test and that the disclosure requirement serves a sufficiently important governmental interest. However, a court very well may find that the bill does not meet exacting scrutiny because the disclosure requirement is not narrowly tailored to the interest it promotes. The author states above that the purpose of the bill is to "provide more transparency into the CEQA litigation process" and notes that "housing projects in particular face legal challenges from interests that have ulterior motives other than the environment." Additionally the author posits that CEQA abuses can hinder the state and local jurisdictions from meeting their housing goals and requirements, while also highlighting the pressing need of the state to build more housing. It is unclear if the bill would facially violate the First Amendment as overbroad in a substantial number of its applications. (*Americans for Prosperity Foundation*, supra. at 2387.) However, based on the facts of the case in *Southern California Gas Company*, it is very likely that an as-applied challenge to the bill's disclosure requirements could be made by an entity or

organization that can demonstrate a chilling effect on their right to freedom of association.

The disclosure of donors that contribute in excess of $5,000 toward to cost of an action does not in any way affect the underlying legal merits of the CEQA action, and it is unclear how this information is intended to promote more housing. Plaintiffs in CEQA cases are often times are environmental organizations or local neighborhood associations, there is a risk that current donors may no longer contribute to these organizations if they fear they will have to disclose not only their identity but also the identity of any pecuniary or business interest that the person or entity has related to the proposed housing development project at issue in the action, or be subject to discovery to ascertain if they have any such business or pecuniary interest. In the above two cases the information to be disclosed was to be kept confidential and that still did not alleviate the chilling effect of the disclosure in the court's view. Under this bill the information is to be made public. Exacerbating this is the fact that individuals donating in their individual capacity have the right to limit disclosure of their personal information to an in-camera review whereas an entity or organization cannot.

California Environmental Voters and the Sierra Club write that the bill's requirements are burdensome on nonprofits "requiring cataloging of donations and potential disclosure of people who have nothing to do with litigation, if an organization does not specifically divide up funding sources for litigation." They further note that the disclosure requirement "serves no public purpose, [as] lawsuits under CEQA serve to enforce a public right. A party's identity does not matter, as anyone can enforce the law. The purpose of this provision is to unacceptably pressure parties, either in the courts or the eyes of the public."

5. Other issues with the disclosure requirement in the bill

The disclosure provision in the bill may contradict the Canons of Judicial Ethics as noted by a coalition of labor organizations, who write:

> Who is picking up the tab for litigation has no bearing on the merits of a case by definition; if anything, it only has the propensity to introduce an unconscious bias rather than limit them. In any case, the Code of Judicial Ethics specifically indicates that judicial opinions are meant to be limited to the merits of the case, not extrinsic information such as who is paying for litigation. Canon 3, subdivision C., of the Code of Judicial Ethics provides, inter alia, that "A judge shall diligently discharge the judge's administrative responsibilities *impartially*, on the basis of merit, without bias or prejudice, free of conflict of interest, and in a manner that promotes public confidence in the integrity* of the judiciary." (emphasis in original).

> The Canons of Judicial Ethics are replete with requirements that judges not consider anything extrinsic to the merits of a case in administering justice. In some ways it is the primary preoccupation of the Canons. For example, Canon 1 begins with the admonishment that "An independent, *impartial*, and honorable judiciary is indispensable to justice in our society." (emphasis in original). In turn "impartial" is defined as, "the absence of bias or prejudice in favor of, or against, particular parties or classes of parties, as well as the maintenance of an open mind in considering issues that may come before a judge." Compelling detailed TPLF disclosures simply creates a class or type of CEQA plaintiff without adding to or elucidating the merits of the case before the judge. (footnotes omitted)

This same coalition also notes that the disclosure requirement may add significant costs and burdens to litigants in a CEQA action and the courts by "expanding the field of potential discovery to questions around funding, and dragging third parties into the discovery process" and that it "create[s] an incentive for defendants to an action to allege a failure to disclose and then a failure to seasonably update disclosures, which motions would inherently require further discovery to determine whether there are [financial] agreements that came into being or changed, or whether additional parties have agreed to contribute to litigation." Additionally, they contend that the provisions regarding allowing the court to withhold public disclosure if it finds that the public interest in keeping that information confidential clearly outweighs the public interest in disclosure and the provision regarding in-camera review for individual donors are likely to add "complication, time, and expense to CEQA actions, not limit or eliminate them." The coalition concludes that the "the only remaining rationale is that this disclosure requirement will intimidate plaintiffs and attorneys out of bringing claims, or keep less wealthy plaintiffs from bringing claims, even meritorious claims, under CEQA, which by no means can be construed as somehow serving any public interest whatsoever." Lastly, the bill would allow a court to dismiss a case, regardless of its merits, if a plaintiff did not comply with a disclosure request under the bill.

6. Other provisions in the bill

The bill also prohibits an action or proceeding from being brought to challenge the approval of a housing project included in a master environmental impact report or other plan or project already approved following the completion of an environmental review conducted pursuant to CEQA, including the resolution of any action or proceeding brought against that prior master environmental impact report or environmental review. This provision does not affect the obligations of a housing project included in a previously approved master environmental impact report, or other plan or project, to comply with the requirements of CEQA for completing further environmental reviews, including complying with all applicable public notice and comment requirements associated with that environmental review. The bill specifies that further environmental reviews relating to the housing project are subject to an

action or proceeding to attack, review, set aside, void, or annul any act or decision of a public agency on the grounds of noncompliance with CEQA.

The Center for Biological Diversity and the Western Center on Law & Poverty are opposed to the bill and write that they appreciate the amendments taken in the Senate Environmental Quality Committee on these provisions but believe it "is still vague and has the potential to engender litigation over whether a certain housing project mentioned or included in a general plan or sustainable communities strategy/regional transportation plan is "included" in such a way that it cannot face a separate challenge under CEQA. The bill thus still has the potential to limit or completely eliminate judicial review for project-level EIRs for many housing projects."

7. Amendments

These amendments do not remove the potential constitutional infirmity of the bill in regards to an as applied challenge under the First Amendment. As the Court stated in *American for Prosperity Foundation* (*supra*. at 2388) it is the requirement of disclosure itself that creates the potential chilling effect that impermissibly infringes on the freedom of association.

The amendments:

- Require the information to be disclosed upon a motion of the defendant, not as an affidavit at the time the plaintiff files the action.
- Raise the amount of a contribution to $10,000 or more.
- Provide a 30 day period where the information disclosed by the plaintiff is confidential and not disclosable.
- Provide that the information disclosed by a plaintiff or petitioner upon a motion by a defendant is not admissible into evidence for any purpose; and
- Makes conforming changes.

A mock-up of the amendments is incorporated at the end of the analysis.[3]

8. Statements in support

The California Apartment Association writes in support stating:

> Unfortunately, CEQA has been abused by individuals and organizations as a way to stop development. While CEQA's original intent was to prevent harm to the environment, the law is often used by special interest groups to accomplish

[3] The amendments may also include technical, nonsubstantive changes recommended by the Office of Legislative Counsel.

> objectives that are not related to environmental protection. In a time when California so desperately needs new housing, your bill will help to shed light on lawsuits that are filed and paid for by anonymous individuals who hide behind plaintiffs so that their names and true intentions are not revealed. These lawsuits have added to the cost of housing production in California.

A Community of Friends (ACOF), a nonprofit organization based in Los Angeles with the specific mission of ending homelessness through the provision of permanent supportive housing for people affected by mental illness, writes in support stating:

> Although we have had challenges developing our 50 apartment communities in the past 30+ years, we had never been involved in litigation until 2017, when we were sued in two different cities by community members opposed to our affordable housing developments. In one case, it was clear who was behind the litigation. We had opportunities to engage with the petitioner during the litigation period, and ultimately reached a settlement agreement that brought the conflict to an end.
>
> In the second case we did not know who the petitioner(s) were. Under the guise of "Citizens for an Equitable Redlands," the petitioners through their attorney refused to meet. There was no opportunity to "face your opponent" and see if we could address concerns amicably. While ACOF ultimately won in court, the delay caused by the litigation resulted in the loss of federal rental subsidies awarded to the project pursuant to a competitive process as well as Federal Home Loan Bank funds, and subjected ACOF and the project to additional costs.

9. Statements in opposition

The Center for Biological Diversity and Western Center on Law & Poverty write in opposition stating:

> Even under the most liberal reading, SB 393 still imposes onerous reporting requirements on conservation and community groups and opens the door for counsel for project proponents (which are often large law firms with substantial resources) to embark on intrusive and extremely costly discovery (depositions, demands for documents, interrogatories, etc.) against conservation and community groups to assess whether they have properly made the disclosures required by SB 393. Such discovery campaigns are not only costly and interfere with the ability of groups to further their mission; they also would have the effect of prolonging CEQA litigation and delaying resolution of cases, in violation of CEQA's goal of prompt resolution of any judicial review. […]
>
> SB 393 appears to impermissibly require the disclosure of information that may be protected by a membership organization's First Amendment associational

> rights. […] Here, SB 393 describes no government interest supporting compelled disclosure of protected activities under the First Amendment, nor can it. Far from leading to the quick resolution of CEQA cases, SB 393 will engender years of costly litigation over its constitutionality, which will likely end with the statute being held unconstitutional. […]
>
> SB 393 is a misguided bill that furthers the narrative that CEQA is a significant barrier to new housing in the state. However, research demonstrates that CEQA is not a major barrier to development and instead helps protect the health and safety of communities.[4] CEQA results in the improvement of development proposals, inclusion of mitigation measures, and reduction of pollution and other harms to communities. For vulnerable communities, CEQA is often the only tool available to provide input on the environmental and public health impacts of development proposals and ensure consideration of alternatives and mitigation measures to limit harm.

SUPPORT

A Community of Friends
California Apartment Association
California Association of Realtors
California Builders Alliance
California Building Industry Association
California Housing Consortium
California YIMBY
City of San Jose
Civil Justice Association of California
Eden Housing
Family Business Association of California
Sacramento Regional Builders Exchange
Southern California Association of Governments

OPPOSITION

California Environmental Voters
California Labor Federation, AFL-CIO
Center for Biological Diversity
Mission Street Neighbors
Natural Resources Defense Council
New Livable California

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[4] See *California's Living Environmental Law: CEQA's Role in Housing, Environmental Justice, & Climate Change* (2021); available at https://rosefdn.org/wp-content/uploads/CEQA-California_s-Living-Environmental-Law-10-25-21.pdf.

SEIU California
Sierra Club California
State Building & Construction Trades Council of California
Teamsters Public Affairs Council
United Food and Commercial Workers, Western States Council
Western Center on Law & Poverty

RELATED LEGISLATION

Pending Legislation: SB 794 (Niello, 2023) requires anyone challenging a project under CEQA to file an affidavit with the court identifying anyone who has contributed $100 or more – in financial or in-kind support – to support the effort. The bill also requires CEQA challenges to certain commercial, housing, or public works projects where a minimum of $25 million has been invested to be resolved by the court in 365 days or fewer. SB 794 failed passage in the Senate Environmental Quality Committee, but was granted reconsideration.

Prior Legislation:

AB 3051 (Diep, 2020) would have required a plaintiff or petitioner in a CEQA action to disclose the identity of a person or entity that contributes in excess of $1,000 toward the plaintiff's or petitioner's costs of the action. This bill was never heard in the Assembly Natural Resources Committee.

AB 3054 (Salas, 2020) would have required a plaintiff or petitioner in a CEQA action to disclose the identity of a person or entity that contributes in excess of $1,000 toward the plaintiff's or petitioner's costs of the action. This bill was never heard in the Assembly Natural Resources Committee.

AB 1673 (Salas, 2019) would have required a plaintiff or petitioner in a CEQA action to disclose the identity of a person or entity that contributes in excess of $1,000 toward the plaintiff's or petitioner's costs of the action. This bill failed passage in the Assembly Natural Resources Committee.

SB 1341 (Glazer, 2018) would have required a plaintiff or petitioner in a CEQA action to disclose the identity of a person or entity that contributes in excess of $1,000, toward the plaintiff's or petitioner's costs of the action. The bill also would have prohibited an action or proceeding from being brought in the court to attack, review, set aside, void, or annul an act of a public agency for housing projects on grounds of noncompliance with CEQA. This bill was never set for a hearing in the Senate Environmental Quality Committee.

SB 1248 (Moorlach, 2016) would have required a plaintiff or petitioner in a CEQA action to disclose the identity of a person or entity that contributes in excess of $100 toward the

plaintiff's or petitioner's costs of the action. This bill was defeated in the Senate Environmental Quality Committee.

AB 2026 (Hadley, 2016) would have required a plaintiff or petitioner in a CEQA action to disclose the identity of a person or entity that contributes in excess of $1,000 toward the plaintiff's or petitioner's costs of the action. This bill was defeated in the Assembly Natural Resources Committee.

PRIOR VOTES:

Senate Environmental Quality Committee (Ayes 6, Noes 0)
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MOCK-UP OF PROPOSED AMENDMENTS

SECTION 1. Section 21176 is added to the Public Resources Code, to read:

21176. (a) ~~In~~ *(1) Any defendant in* an action or proceeding to attack, review, set aside, void, or annul any act or decision of a public agency relating to a housing development project, as defined in subdivision (h) of Section 65589.5 of the Government Code, on the grounds of noncompliance with this ~~division,~~ *division may file a motion requesting the plaintiff or petitioner to identify* the plaintiff or petitioner shall include an affidavit identifying every person or entity who made a monetary contribution of ~~five~~ *ten* thousand dollars ~~($5,000)~~ *($10,000)* or more, or committed to contribute ~~five~~ *ten* thousand dollars ~~($5,000)~~ *($10,000)* or more, for the preparation of the petition and subsequent action or proceeding.

(2) Upon a motion by the defendant pursuant to paragraph (1), a plaintiff or petitioner shall provide the information specified under this section within seven days.

(3) Any information disclosed to the defendant by the plaintiff or the petitioner pursuant to this section shall be keep confidential and not disclosed to anyone for 30 days.

(4) A plaintiff or petitioner may request the court's permission to withhold the public disclosure of a person or entity who made a monetary contribution. The court may grant the request if it finds that the public interest in keeping that information confidential clearly outweighs the public interest in disclosure. If the court grants a request under this paragraph, the information disclosed to the defendant shall be kept confidential.

(b) ~~The~~ *If the defendant makes a motion pursuant to subdivision (a), the* plaintiff or petitioner shall have a continuing obligation throughout the course of the proceeding to identify any person or entity that has made a single or multiple contributions or commitments, the sum of which is ~~five~~ *ten* thousand dollars ~~($5,000)~~ *($10,000)* or more, and that were intended to fund the action or proceeding within seven days of receiving the contribution. *All other provisions of this section shall apply to a disclosure under this subdivision.*

(c) In complying with subdivisions (a) and (b), the plaintiff or petitioner shall use reasonable efforts to identify the actual persons or entities that are the true source of the contributions.

(d) The disclosures required pursuant to subdivisions (a) and (b) shall include the exact total amount contributed and also include the identity of any pecuniary or business interest that the person or entity has related to the proposed *housing development* project.

~~(e) A plaintiff or petitioner may request the court's permission to withhold the public disclosure of a contributor. The court may grant the request if it finds that the public~~

~~interest in keeping that information confidential clearly outweighs the public interest in disclosure.~~

(e) The information disclosed by a plaintiff or petitioner upon a motion by a defendant pursuant to this section shall not be admissible into evidence for any purpose.

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

(g) An individual contributing funds to file an action or proceeding pursuant to this division in that individual's individual capacity, and not as a representative for an organization or association, has the right to limit disclosure of that individual's personal information to an in-camera review by the court.

~~(h) The information disclosed pursuant to this section may be used to enable a court to determine whether the financial burden of private enforcement supports the award of attorneys' fees in actions or proceedings brought to enforce this division.~~

SEC. 2. Section 21176.5 is added to the Public Resources Code, to read:

21176.5. (a) An action or proceeding shall not be brought pursuant to Section 21167 challenging the approval of a housing project included in a master environmental impact report, pursuant to Article 2 (commencing with Section 21157) of Chapter 4.5, or other plan or project already approved following the completion of an environmental review conducted pursuant to this division, including the resolution of any action or proceeding brought against that prior master environmental impact report or environmental review.

(b) This section does not affect the obligations of a housing project included in a previously approved master environmental impact report, or other plan or project, to comply with the requirements pursuant to this division for completing further environmental reviews, including complying with all applicable public notice and comment requirements associated with that environmental review.

(c) Further environmental reviews relating to the housing project are subject to an action or proceeding to attack, review, set aside, void, or annul any act or decision of a public agency on the grounds of noncompliance with this division, pursuant to Section 21167.