

SENATE JUDICIARY COMMITTEE
Senator Thomas Umberg, Chair
2025-2026 Regular Session

AB 1370 (Patterson)
Version: June 23, 2025
Hearing Date: July 1, 2025
Fiscal: Yes
Urgency: No
ME

SUBJECT

State Legislature: nondisclosure agreements

DIGEST

This bill prohibits members of the Legislature, acting in their official capacity from entering into, or requesting that another individual enter into, a nondisclosure agreement relating to the drafting, negotiation, or discussion of proposed legislation, as specified, and provides that any such nondisclosure agreement entered into or requested by a member of the Legislature, after the effective date of this legislation shall be void and unenforceable, as specified.

EXECUTIVE SUMMARY

In early 2024, reports surfaced that negotiators of two bills were asked to sign nondisclosure agreements.¹ Although there is no evidence that this actually occurred and counsel is unaware of any instance in which a legislator or staff of the Legislature has requested anyone sign a nondisclosure agreement related to Legislation, the author brings this legislation forward to prohibit the practice.

This bill prohibits members of the Legislature, acting in their official capacity from entering into, or requesting that another individual enter into, a nondisclosure agreement relating to the drafting, negotiation, or discussion of proposed legislation, as specified, and provides that any such nondisclosure agreement entered into or requested by a member of the Legislature, after the effective date of this legislation shall be void and unenforceable, as specified.

This bill is author sponsored and supported by Oakland Privacy. It has no known opposition. If AB 1370 passes this Committee it will then be heard in the Senate Committee on Elections and Constitutional Amendments.

¹ Zavala, Ashley, *Non-disclosure agreements were used in negotiations of California's landmark fast food worker law* (March 7, 2024), available at: <https://www.kcra.com/article/california-fast-food-law-panera-newsom-nda/60117858> [as of June 21, 2025].

PROPOSED CHANGES TO THE LAW

Existing law:

- 1) Provides that a member of the Legislature, state elective or appointive officer, or judge or justice shall not, while serving as such, have any interest, financial or otherwise, direct or indirect, or engage in any business or transaction or professional activity, or incur any obligation of any nature, that is in substantial conflict with the proper discharge of their duties in the public interest and of their responsibilities as prescribed in the laws of this state. (Gov. Code § 8920 (a).)
- 2) Provides that an employee of either house of the Legislature shall not, during the time they are so employed, commit any act or engage in any activity prohibited by Article 2, sections 8920 through 8926 of the Government Code. Provides that the provisions of Article 2 and Article 3 (commencing with Section 8940) that are applicable to a member of the Legislature are also applicable to any employee of either house of the Legislature. (Gov. Code § 8924 (a).)
- 3) Provides that the people have the right of access to information concerning the conduct of the people's business and, therefore, the writings of public officials and agencies shall be open to public scrutiny. Specifies that any law or rule that limits the public right of access shall be adopted with findings demonstrating the interest protected by the limitation. (California Constitution, art. I, § 3.)
- 4) Provides that, in enacting the California Public Records Act, the Legislature, mindful of the right of individuals to privacy, finds and declares that access to information concerning the conduct of the people's business is a fundamental and necessary right of every person in this state. (Gov. Code § 7921.000.)

This bill:

- 1) Makes findings and declarations about nondisclosure agreements.
- 2) Provides that a member of the Legislature acting in their official capacity shall not enter into, or request that another individual enter into, a nondisclosure agreement relating to the drafting, negotiation, or discussion of proposed legislation, except as specified.
- 3) Provides that any nondisclosure agreement relating to the drafting, negotiation, or discussion of proposed legislation entered into or requested by a member of the Legislature after the effective date of this bill shall be void and unenforceable, except as specified.

- 4) Provides that members of the Legislature are not prohibited from entering into or requesting a nondisclosure agreement that prevents only the disclosure of trade secrets, financial information, or proprietary information.
- 5) Provides that nondisclosure agreements or portions of nondisclosure agreements that prevent only the disclosure of trade secrets, financial information, or proprietary information are not void and unenforceable.
- 6) Provides that the provisions of this bill only apply to members of the Legislature acting in their official capacity.
- 7) Defines “discussion” as direct or indirect communications engaged in by individuals for the purpose of reaching a decision regarding proposed Legislation.
- 8) Defines “drafting” as developing language for proposed legislation to be considered by the Legislature.
- 9) Defines “negotiation” as any form of direct or indirect communication whereby individuals who have opposing interests discuss the form of any proposed legislation that may resolve a dispute involving those interests.
- 10) Places this bill’s provisions within Article 2 of the Government Code and thus would make the provisions of the bill that are applicable to a member of the legislature also applicable to any employee of either house of the Legislature. However, the bill makes it clear that the provisions of the bill only apply to members of the Legislature.

COMMENTS

1. Stated need for the bill

According to the author:

People can only have faith in a government to the extent that they trust it. When elected officials sign non-disclosure agreements (NDAs), it not only creates a barricade to information that should be publicly available, it creates a level of distrust in the foundations of our democracy. This bill offers a simple, common-sense solution: it prevents legislators from signing NDAs pertaining to legislative matters, but permits safeguarding protected information such as trade secrets. AB 1370 provides necessary transparency for the public when it comes to decisions that impact legislation and the expenditures of tax dollars.

2. Genesis of this bill

A nondisclosure agreement (NDA) is a provision in a contract that binds the parties to secrecy regarding information specified in the contract. NDAs typically specify that damages will be imposed if a party violates the NDA.

The Assembly Judiciary Committee analysis for AB 1370 explains the genesis for this bill. According to the analysis:

The issue of the use of NDAs in legislative negotiations garnered increased attention last year after the Sacramento-area television station *KCRA*, citing sources close to the AB 257 negotiations, reported that unspecified parties involved in the AB 1228 negotiations were asked to sign an NDA to protect the confidentiality of the negotiations. *KCRA* indicated in its report that it had not seen a copy of the NDA, and that the terms of the NDA were not disclosed. *KCRA* additionally quoted the Governor's office as saying that the Governor did not sign an NDA in connection with the negotiations, and did not direct anyone to sign an NDA. (Zavala, Ashley, *Non-disclosure agreements were used in negotiations of California's landmark fast food worker law* (March 7, 2024), available at <https://www.kcra.com/article/california-fast-food-law-panera-newsom-nda/60117858>.)

Other media sources subsequently covered the story, including the *Associated Press* (AP), which reported that the alleged NDA "covered some of the private parties involved, including labor unions representing restaurant workers and the industry group for restaurants." The AP reported that the NDA did not include the Governor or any other public officials. (Beam, Adam, *Confidentiality pact deepens mystery of how bakery clause got into California minimum wage law* (March 11, 2024), available at <https://www.local10.com/news/national/2024/03/11/confidentiality-pact-deepens-mystery-of-how-bakery-clause-got-into-california-minimum-wage-law/>.)

Based upon the new coverage, there is no reason to believe that any public officials, including Legislators, legislative staff, the Governor, or staff to the Governor, signed an NDA in connection with negotiations relating to AB 257/AB 1228; nor does it appear that any such public officials requested anyone to sign an NDA in connection with those negotiations, or otherwise to be bound by an NDA when involved in legislative negotiations.

In response to the allegations of the use of NDAs, AB 2654 (Fong, 2024) was introduced. That bill would have prohibited lobbyists and certain public officials and employees, as specified, from entering into, or requesting that another party enter into, a nondisclosure agreement relating to the drafting, negotiation, discussion, or creation of legislation. AB 2654 would also have made any nondisclosure agreement relating to the

drafting, negotiation, discussion, or creation of legislation entered into after the effective date of the bill void and unenforceable. Because the bill would have amended the Political Reform Act of 1974, the violation of the provisions of the bill would have been punishable as a misdemeanor. AB 2654 failed passage in the Assembly Elections Committee.

AB 1370 was introduced this year to prohibit members of the Legislature, acting in their official capacity, from entering into, or requesting that another individual enter into, a nondisclosure agreement relating to the drafting, negotiation, or discussion of proposed Legislation, as specified, and provides that any such nondisclosure agreement entered into or requested by a member of the legislature, after the effective date of this legislation shall be void and unenforceable, as specified. Instead of amending the Political Reform Act of 1974, AB 1370 places this bill's provisions within Article 2 of the Government Code. Current Government code section 8924 (a) operates together with this bill to make the provisions of the bill that are applicable to a member of the Legislature also applicable to any employee of either house of the Legislature. However, this bill specifies that the provisions of the bill only apply to the members of the Legislature and not staff.

3. Support

Oakland Privacy writes the following in support of the bill:

[. . .] In much of the advocacy work that we do, governmental transparency is a crucial ingredient. It is simply not possible to protect privacy rights if the activities of governmental bodies are shielded from public scrutiny. So while we may be accidental open government acolytes, we have seen first-hand the importance of rigorous governmental transparency. Non-disclosure agreements have played a significant role in several of our concerns, perhaps most famously in the non-disclosure agreements that concealed the use of cell site simulators or stingrays from the public and the courts for more than a decade.

[. . .] By its very nature, the legislative process is intended to be an open airing of issues and concerns to arrive at the best possible policy approach. And how legislative bodies and their members engage in that process is the material evidence that voters use to decide if they wish to return those members to office. When that process is invisible or obscured, there is a significant democracy deficit that harms both parties and the integrity of government.

We want to be clear that in choosing to support this bill, we are not opining on various politically-motivated charges and countercharges whose veracity we do not know, nor are we stating that there is or isn't evidence that members of the Legislature have or haven't signed, or caused to be signed, non-disclosure agreements on legislative matters.

It is simply that as a matter of public policy, non-disclosure agreements outside of a very narrow window relating to specific proprietary business information, have no place in the legislative process. We acknowledge that negotiations, especially on controversial issues and under time pressure, can be difficult to hammer out in the bright light of an audience, but it is exactly that spotlight that ensures that stakeholders are heard and issues are aired out. The legislative process is not a back room deal.

AB 1370 adds this prohibition explicitly to the Legislative Code of Ethics in the Government Code, filling out language that currently prohibits members from “engaging in activities that are in substantial conflict with their official duties” to clearly identify that a non-disclosure agreement about legislative proposals is in substantial conflict with the official duties of an elected member of the Legislature.

SUPPORT

Oakland Privacy

OPPOSITION

None known

RELATED LEGISLATION

Pending Legislation: None known.

Prior Legislation: AB 2654 (Fong, 2024) would have prohibited lobbyists and certain public officials and employees, as specified, from entering into, or requesting that another party enter into, a nondisclosure agreement relating to the drafting, negotiation, discussion, or creation of legislation. The bill would also have made any nondisclosure agreement relating to the drafting, negotiation, discussion, or creation of legislation entered into after the effective date of the bill void and unenforceable. Because the bill would have amended the Political Reform Act of 1974, the violation of the provisions of the bill would have been punishable as a misdemeanor. AB 2654 failed passage in the Assembly Elections Committee.

PRIOR VOTES:

Assembly Floor (Ayes 71, Noes 0)
Assembly Appropriations Committee (Ayes 15, Noes 0)
Assembly Judiciary Committee (Ayes 12, Noes 0)
Assembly Elections Committee (Ayes 7, Noes 0)
