

Date of Hearing: April 9, 2025

**ASSEMBLY COMMITTEE ON ELECTIONS**

Gail Pellerin, Chair

AB 1370 (Patterson) – As Introduced February 21, 2025

**SUBJECT:** Political Reform Act of 1974: nondisclosure agreements.

**SUMMARY:** Prohibits a Member of the Legislature from entering into or requesting a nondisclosure agreement (NDA) in connection with negotiations over legislation, as specified. Specifically, **this bill**:

- 1) Prohibits a Member of the Legislature, while acting in their official capacity, from entering into, or requesting that another individual enter into, an NDA relating to the drafting, negotiation, or discussion of proposed legislation. Makes void and unenforceable any NDA 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.
- 2) Provides that the provisions of this bill do not prohibit a Member of the Legislature from entering into or requesting an NDA that relates to the drafting, negotiation, or discussion of proposed legislation, nor does it make void and unenforceable such an NDA or a portion of an NDA, if the NDA or the relevant portion prevents only the disclosure of trade secrets, financial information, or proprietary information.
- 3) Defines the following terms for the purpose of this bill:
  - a) “Discussion” to mean direct or indirect communications engaged in by individuals for the purpose of reaching a decision regarding proposed legislation.
  - b) “Drafting” to mean developing language for proposed legislation to be considered by the Legislature.
  - c) “Negotiation” to mean 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.
- 4) Makes various findings and declarations.

**EXISTING LAW:**

- 1) Provides that the people have the right of access to information concerning the conduct of the people’s business, and, therefore, the meetings of public bodies and the writings of public officials and agencies shall be open to public scrutiny. Provides that this provision does not repeal, nullify, supersede, or modify protections for the confidentiality of proceedings and records of the Legislature, the Members of the Legislature, and its employees, committees, and caucuses, as provided by a specified provision of the California Constitution, state law, or legislative rules adopted in furtherance of those provisions. (California Constitution, Article I, §3(b))

- 2) Requires legislative records, except as specified, to be open to inspection by any person pursuant to the Legislative Open Records Act (LORA). (Government Code §§9070-9080)
- 3) Creates the Fair Political Practices Commission (FPPC), and makes it responsible for the impartial, effective administration and implementation of the Political Reform Act (PRA). (Government Code §§83100, 83111)
- 4) Provides that the people enacted the PRA to accomplish the following purposes:
  - a) Receipts and expenditures in election campaigns should be fully and truthfully disclosed in order that the voters may be fully informed and improper practices may be inhibited.
  - b) The activities of lobbyists should be regulated and their finances disclosed in order that improper influences will not be directed at public officials.
  - c) Assets and income of public officials which may be materially affected by their official actions should be disclosed and in appropriate circumstances the officials should be disqualified from acting in order that conflicts of interest may be avoided.
  - d) The state ballot pamphlet should be converted into a useful document so that voters will not be entirely dependent on paid advertising for information regarding state measures.
  - e) Laws and practices unfairly favoring incumbents should be abolished in order that elections may be conducted more fairly.
  - f) Adequate enforcement mechanisms should be provided to public officials and private citizens in order that this title will be vigorously enforced. (Government Code §81002)
- 5) Permits the PRA to be amended or repealed only through one of the following procedures:
  - a) Amendments to the PRA that further its purposes may be enacted by statute that is passed by a two-thirds vote in each house and signed by the Governor, if the bill in its final form has been delivered to the FPPC for distribution, as specified; or,
  - b) The PRA may be amended or repealed by a statute that becomes effective only when approved by the electors. (Government Code §81012)
- 6) Establishes a Legislative Code of Ethics, which regulates the conduct of Members and employees of the Legislature, including all of the following:
  - a) Prohibits a Member or employee of the Legislature, while serving as such, from having any interest, financial or otherwise, engaging in any business or transaction or professional activity, or incurring any obligation of any nature, that is in substantial conflict with the proper discharge of the person's duties in the public interest and the person's responsibilities under state law.
  - b) Prohibits a Member or employee of the Legislature from doing any of the following:

- i) Accepting other employment that impairs the person's independence of judgment in their official duties or that requires or induces the person to disclose confidential information, as specified.
  - ii) Willfully and knowingly disclosing confidential information to another person for pecuniary gain, or using confidential information for pecuniary gain, as specified.
  - iii) Accepting or agreeing to accept any thing of monetary value in consideration of appearing before or taking any other action on behalf of another person before a state board or agency, as specified.
  - iv) Receiving or agreeing to receive any compensation, reward, or gift from any source except the State of California for any service, advice, assistance or other matter related to the legislative process, except as specified.
  - v) Participate in the passage or defeat of legislation in which the person has a personal interest, except as specified. (Government Code §§8920-8926)
- 7) Provides that a person who knowingly and willfully violates any provision of the Legislative Code of Ethics is guilty of a misdemeanor, and every person who conspires to violate it is guilty of a felony. (Government Code §8926)

**FISCAL EFFECT:** Unknown. State-mandated local program; contains reimbursement direction.

**COMMENTS:**

- 1) **Purpose of 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) **Overview of Nondisclosure Agreements:** An NDA is a provision in a contract that binds the parties to secrecy regarding information specified in the contract. NDAs generally prohibit parties from disclosing the specified information to people who are not parties to the NDA, and often provide for the damages that will be imposed if a party shares information in violation of the NDA. NDAs commonly are used to protect sensitive and confidential information, including trade secrets and business negotiations.
- 3) **Background on Nondisclosure Agreements in Legislative Negotiations:** Three years ago, the Legislature approved and Governor Newsom signed AB 257 (Holden), Chapter 246, Statutes of 2022, which proposed to establish a Fast Food Council within the Department of

Industrial Relations for the purpose of establishing sector-wide minimum standards on wages, working hours, and other working conditions related to the health, safety, and welfare of fast food restaurant workers, among other provisions. After passage of AB 257, opponents of the law launched a referendum against the bill, and subsequently gathered a sufficient number of valid signatures of California voters to qualify that referendum for the ballot. The qualification of the referendum had the effect of suspending the operation of AB 257 until California voters could vote on whether to affirm or reject AB 257. At the time the AB 257 referendum qualified for the ballot, it was expected that the referendum would appear on the ballot for voters' consideration at the November 5, 2024, statewide general election.

In 2023, certain proponents and opponents of AB 257 entered into negotiations over potential changes to AB 257. Those negotiations led to an agreement under which changes would be made to AB 257 that were contingent upon the withdrawal of the AB 257 referendum by its proponents by January 1, 2024. The negotiated changes to AB 257 were codified in AB 1228 (Holden), Chapter 262, Statutes of 2023, and the Secretary of State announced on December 29, 2023, that the proponents had withdrawn the AB 257 referendum.

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 private 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.<sup>1</sup>

Other media sources subsequently corroborated the report from *KCRA*, including the *Associated Press (AP)*, which reported that the 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.<sup>2</sup> Committee staff is not aware of any reporting that suggests that any public officials, including Legislators, legislative staff, the Governor, or staff to the Governor, signed an NDA in connection with negotiations over AB 1228, requested that anybody else sign an NDA in connection with those negotiations, or otherwise were bound by an NDA when involved in legislative negotiations.

Last year, this committee considered AB 2654 (Vince Fong) of 2024, which would have prohibited lobbyists and specified public officials and employees from entering into an NDA related to negotiations about legislation. AB 2654 failed passage in this committee by a 2-1 vote (5 votes were required for passage). This bill, however, is considerably narrower than AB 2654. Unlike AB 2654, this bill would not prohibit private parties from entering into NDAs in connection with negotiations over legislation, as long as those NDAs were not entered into at the request of a Member of the Legislature. Additionally, unlike AB 2654, this

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<sup>1</sup> <https://www.kcra.com/article/california-fast-food-law-panera-newsom-nda/60117858>, last visited April 1, 2025.

<sup>2</sup> <https://www.local10.com/news/national/2024/03/11/confidentiality-pact-deepens-mystery-of-how-bakery-clause-got-into-california-minimum-wage-law/>; last visited April 1, 2025.

bill would not restrict NDAs related to negotiations over legislation if those NDAs restrict only the disclosure of trade secrets, financial information, or proprietary information.

- 4) **Public Transparency and the Legislative Process:** While the author argues that it is important for transparency to prohibit Legislators from entering into NDAs related to the discussion of proposed legislation, or requesting that other parties do so, it is unclear how common such NDAs are under existing law. The author has provided one example of a press report in which a former member of the Legislature stated that he signed a confidentiality agreement in connection with negotiations over potential legislative alternatives to a ballot measure.<sup>3</sup> Committee staff is unaware of any other reports of Legislators entering into an NDA in connection with legislative negotiations, or asking anyone else to do so. (The author additionally provided news articles that discuss Members of the Legislature who entered into an NDA in connection with the project to build a new State Capitol Annex, but nothing in those articles indicate that the NDA was related to negotiations over *legislation*. Instead, based on the reporting, it appears that NDA was intended to protect the competitive bidding process, and to protect against public disclosure about potentially-sensitive security information related to the new Annex. As a result, it does not appear that this bill would have applied to that NDA.)

The legislative process is designed to provide a public forum in which legislation can be considered, Legislators can ask questions and propose amendments, and the public can provide comment. Even if someone involved in legislative negotiations entered into an NDA as part of those negotiations, the NDA would not bypass the public legislative process, nor would it limit the questions that Members of the Legislature can ask of people involved in the negotiations and of people who would be affected by the proposed legislation. As is always the case, if a Legislator does not receive satisfactory answers in response to questions, that Legislator may take that into consideration when deciding how to vote—or whether to vote—on the proposed legislation.

- 5) **FPPC Enforcement, the Political Reform Act of 1974, and Proposed Amendments:** California voters passed an initiative, Proposition 9, in 1974 that created the FPPC and codified significant restrictions and prohibitions on candidates, officeholders, and lobbyists. That initiative is commonly known as the PRA. Amendments to the PRA that are not submitted to the voters, such as those contained in this bill, must further the purposes of the initiative and require a two-thirds vote of both houses of the Legislature.

Proposition 9 included provisions that stated the purposes of the voters in enacting the PRA. In short, those purposes were regulating campaign finance, lobbying, conflicts of interest, the state ballot pamphlet, and laws that favor incumbents, and providing adequate enforcement mechanisms for those regulations.

As currently in print, this bill proposes to add the restrictions related to NDAs into the PRA; accordingly, those restrictions would be enforced by the FPPC. It is unclear, however, whether the restrictions proposed by this bill fit within the scope of the PRA, and with the

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<sup>3</sup> <https://www.kcra.com/article/former-california-lawmaker-nda-negotiations-state-law/60688369>, last visited April 1, 2025.

enumerated purposes of the voters in enacting the PRA. While similar legislation from last session that sought to regulate NDAs related to legislative negotiations (described in more detail above) would have regulated the conduct of lobbyists, this bill does not. As such, it is unclear whether the amendments proposed by this bill would “further the purposes” of the PRA – a requirement for any bill that proposes to amend the PRA without being submitted to the voters for their consideration. Furthermore, requiring the FPPC to enforce the provisions of this bill could require the FPPC to investigate internal deliberations of the Legislature, which potentially raises separation of powers issues.

The legislative activities of Members of the Legislature already are regulated elsewhere in the Government Code through the Legislative Code of Ethics. Violations of the Legislative Code of Ethics are misdemeanors, and a conspiracy to violate the Code of Ethics is a felony. Committee staff recommends that this bill be amended to remove the restrictions on NDAs from the PRA, and instead to codify those requirements in the Legislative Code of Ethics.

6) **Double-Referral:** This bill is double-referred to the Assembly Judiciary Committee.

#### **REGISTERED SUPPORT / OPPOSITION:**

##### **Support**

None on file.

##### **Opposition**

None on file.

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