

CONCURRENCE IN SENATE AMENDMENTS

AB 1370 (Patterson)

As Amended June 23, 2025

Majority vote

SUMMARY

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

Senate Amendments

Add co-authors.

COMMENTS

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.

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. In 2023, certain proponents and opponents of AB 257 entered into negotiations over potential changes to AB 257. Those negotiations led to an agreement which was codified in AB 1228 (Holden), Chapter 262, Statutes of 2023.

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. Assembly Elections 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.

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 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. Assembly Elections 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 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.

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."

Arguments in Support

In support of this bill, Oakland Privacy writes, "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...[A]s 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."

Arguments in Opposition

None received.

FISCAL COMMENTS

According to the Senate Appropriations Committee:

- 1) Unknown, potentially significant costs to the state funded trial court system (Trial Court Trust Fund, General Fund) to adjudicate the new crime created by this bill. Defendants are constitutionally guaranteed certain rights during criminal proceedings, including the right to a jury trial and the right to counsel (at public expense if the defendants are unable to afford the costs of representation). Increasing penalties leads to lengthier and more complex court proceedings with attendant workload and resource costs to the court. The fiscal impact of this bill to the courts will depend on many unknowns, including the numbers of people charged with an offense and the factors unique to each case. An eight-hour court day costs approximately \$10,500 in staff in workload. This is a conservative estimate, based on the hourly rate of court personnel including at minimum the judge, clerk, bailiff, court reporter, jury administrator, administrative staff, and jury per-diems. If court days exceed 10, costs to the trial courts could reach hundreds of thousands of dollars. While the courts are not funded on a workload basis, an increase in workload could result in delayed court services and would put pressure on the General Fund to fund additional staff and resources and to increase the amount appropriated to backfill for trial court operations.

- 2) Unknown, potentially significant costs (local funds, General Fund) to the counties to incarcerate people for the crime created by this bill. The average annual cost to incarcerate one person in county jail varies by county, but likely ranges from \$70,000 to \$90,000 per year. For example, in 2021, Los Angeles County budgeted \$1.3 billion for jail spending, including \$89,580 per incarcerated person. Actual incarceration costs to counties will depend on the number of convictions and the length of each sentence. Generally, county incarceration costs are not reimbursable state mandates pursuant to Proposition 30 (2012).
- 3) Unknown, potentially significant costs (General Fund) to the Department of Corrections and Rehabilitation (CDCR) to incarcerate people for the felony expanded by this bill. The Legislative Analyst's Office estimates the average annual cost to incarcerate one person in state prison is \$133,000. If even just one person is sentenced to state prison for one year under this bill, it will add significant costs pressures to CDCR.

VOTES:

ASM ELECTIONS: 7-0-0

YES: Pellerin, Macedo, Bennett, Berman, Solache, Stefani, Tangipa

ASM JUDICIARY: 12-0-0

YES: Kalra, Dixon, Bauer-Kahan, Bryan, Connolly, Harabedian, Macedo, Pacheco, Lee, Sanchez, Stefani, Zbur

ASM APPROPRIATIONS: 15-0-0

YES: Wicks, Sanchez, Arambula, Calderon, Caloza, Dixon, Elhawary, Fong, Mark González, Hart, Pacheco, Pellerin, Solache, Ta, Tangipa

ASSEMBLY FLOOR: 71-0-8

YES: Addis, Aguiar-Curry, Ahrens, Alanis, Alvarez, Arambula, Ávila Farías, Bains, Bauer-Kahan, Bennett, Berman, Boerner, Bonta, Calderon, Caloza, Carrillo, Castillo, Connolly, Davies, DeMaio, Dixon, Elhawary, Flora, Fong, Gabriel, Gallagher, Garcia, Gipson, Jeff Gonzalez, Mark González, Hadwick, Haney, Harabedian, Hart, Hoover, Irwin, Jackson, Kalra, Krell, Lackey, Lee, Lowenthal, Macedo, McKinnor, Muratsuchi, Ortega, Pacheco, Papan, Patel, Patterson, Pellerin, Petrie-Norris, Quirk-Silva, Ramos, Ransom, Celeste Rodriguez, Michelle Rodriguez, Rogers, Blanca Rubio, Schiavo, Solache, Soria, Stefani, Ta, Tangipa, Valencia, Wallis, Ward, Wilson, Zbur, Rivas

ABS, ABST OR NV: Bryan, Chen, Ellis, Nguyen, Sanchez, Schultz, Sharp-Collins, Wicks

UPDATED

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