



April 23, 2024

The Honorable Vince Fong
Assemblymember
1021 O St, Suite 4630
Sacramento, CA 95914

RE: AB 2654 (FONG): SUPPORT AS AMENDED APRIL 18, 2024

Assemblymember Fong:

The California Business Roundtable and the organizations listed below strongly **support** AB 2654, as amended on April 18, 2024. This bill rightfully bans non-disclosure agreements (NDAs) as part of legislative drafting. This commonsense legislation is an important step to ensure basic transparency in our public policy decision-making process so that all Californians are able to access information about how laws are made.

AB 2654 is a logical expansion of the repeated will of the People of California.

California voters have been clear and consistent in their support for transparency and accountability. In 2004, the Legislature unanimously passed Proposition 59, called the sunshine amendment which made access to public information a *civil right*, declaring, in part: “**The people have the right of access to information concerning the conduct of the people’s business.**” It was passed overwhelmingly by the voters with 83.4% support. However, in drafting Prop. 59 for the ballot, the Legislature specifically excluded itself from the provisions. Subsequent legislation to close that loophole and ensure greater transparency and accountability was quickly defeated by the legislative majority party.

In 2016, voters overwhelmingly supported Prop. 54, which required legislation to be in its final form for at least 72 hours prior to a vote on the Floor of either house. This was a clear signal from the voters that they demand to know how bills are made, including what language is being voted on by their elected representatives. AB 2654 is a continuation of Prop. 54, demanding that legislators, lobbyists, and special interest groups conduct the work of the people in an open and transparent manner.

NDAs in the legislative process are essentially “sign-to-play” mandates.

Current law prohibits public officials from entering into NDAs, but it does not prevent public officials from demanding that special interests and lobbyists sign NDAs as a prerequisite to engaging in the legislative process with public officials. This creates a **sign-to-play** standard for those wanting to participate in the legislative process, denying access to this process to only those willing to enter into an NDA.

Current law protects sensitive information from being released.

Any assertion that NDAs allow for the transmission of information that may be sensitive, including trade secrets and other protected information is misleading. The California Public Records Act (CPRA) already exempts trade secrets as part of Evidentiary Code Section 1060, incorporated into the CPRA through section Government Code Section 6254(k). Additionally, CPRA exempts additional disclosures of privileged information, including communications with and between attorneys. There are more than enough protections and exemptions to the CPRA under current law to protect any propriety business information and sensitive information that may be disclosed as part of legislative negotiations.

Significant loopholes in both the California Public Records and and Legislative Open Records Act necessitate AB 2654.

AB 2654 is important because neither the CPRA nor the Legislative Open Records Act (LORA) provides adequate transparency to government communications. There are 76 exemptions to the Public Records Act alone, including the broadly interpreted “deliberative process” standard established by the California Supreme Court in its ruling *Times Mirror Co. v. Superior Court*, 53 Cal. 3d 1325, 1342 (1991). Members of the media and general public have often—and rightfully—pointed out the severe limitations to both laws, which give wide deference to government officials at the expense of transparency. In the past, legislative Rules Committees have denied providing information on legislators’ calendars, whether they used taxpayer-funded vehicles for travel, and even the number of LORA and CPRA requests made to legislative offices. Recent inquiries into the creation of legislation—and specifically last-minute exemptions to legislation—reinforce this point. Not only did the author of the bill have no knowledge of specific exemptions, but inquiries by this legislative body using the CPRA were denied, citing exemptions listed above. The shortcomings of both CPRA and LORA reinforce the need for AB 2654, not detract from it.

Ultimately, AB 2654 is about ensuring transparency and demanding accountability in our elected officials and those making the laws which govern this state.

No other Legislature or gubernatorial administration has relied on NDAs to execute high-stakes negotiations and build compromise. In fact, in order to do our due diligence, we reached out to four previous gubernatorial administrations to determine if NDAs were ever used, or even considered. The answer was a resounding “no.” There has been no change in law that would now require NDAs, no strengthening of CRPA or LORA that would necessitate such mandated secrecy. In fact, the opposite has happened. Over the past several years, in an extension of what were supposed to be *temporary* exemptions during the State of Emergency during COVID, the Legislature has attempted to further weaken transparency through expanded exemptions to the Brown Act, including using the severely opaque budget trailer bill process to pass legislation defeated in the policy committee process.

AB 2654 is, at its core, about maintaining the trust the people of this state have in their government. When the Bagley-Keene Act was passed in 1967, it declared:

“The people of this state do not yield their sovereignty to the agencies which serve them. The people, in delegating authority, do not give their public servants the right to decide what is good

for the people to know and what is not good for them to know. The people insist on remaining informed so that they may retain control over the instruments they have created.”

AB 2654 as written is a very important continuation of the will of the voters, who have made their right to hold their elected officials accountable through transparency a fundamental civil right in this state and who have repeatedly voted to ensure the people’s house does the people’s work. We strongly support AB 2654.

Thank you.

Sincerely,



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President
California Business Roundtable



MATTHEW G. HARGROVE
President & Chief Executive Officer
California Business Properties Association



JOHN KABATECK
State Director
National Federation of Independent Business