

**Assembly Bill No. 2578**

CHAPTER 1097

An act to add Section 10426 to the Public Contract Code, and to add Section 352.7 to the Public Utilities Code, relating to contracts.

[Approved by Governor September 29, 2002. Filed with Secretary of State September 29, 2002.]

LEGISLATIVE COUNSEL'S DIGEST

AB 2578, Shelley. Contracts: breach of confidentiality: proprietary information.

Existing law provides for the prosecution of specified criminal actions against persons in violations of public contracts.

This bill would provide that it is a misdemeanor for a contracting party to intentionally disclose any proprietary information, as defined, obtained during the negotiation, execution, or performance of a contract with a state agency or the Independent System Operator when the contracting party knew or should have known that the disclosure was likely to cause harm.

This bill would, by expanding the definition of a crime, impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

*The people of the State of California do enact as follows:*

SECTION 1. Section 10426 is added to Public Contract Code, to read:

10426. (a) It shall be unlawful for a person to intentionally disclose proprietary information obtained in the negotiation, execution, or performance of a consulting services contract, as defined in Section 10335.5, or an information technology contract, as defined in Section 11702 of the Government Code, with a state agency when the contracting party knew or should have known that the disclosure was likely to cause harm.



(b) A violation of this section shall be punishable as a misdemeanor and may be prosecuted by the Attorney General or by a local district attorney in the district in which the disclosure took place.

(c) (1) For the purposes of this section “proprietary information” shall include any information agreed by the contracting parties to be proprietary or any information that is designated by a contracting state agency to be proprietary. A contracting state agency shall specifically identify in the contract any information that is considered to be proprietary. The state agency shall make this designation only in cases where the state agency has reason to believe that the release of this information poses an immediate threat to the health, safety, or welfare of the public or the state agency has reason to believe that the contracting party intends to sell the information. If the state agency makes a designation of proprietary information subsequent to the execution of the contract, the state agency shall make a good faith effort to amend the contract to incorporate the subsequent designation of proprietary information. A contracting state agency shall provide written notification to a contracting party of any information that, subsequent to the execution of the contract, is identified to be proprietary. A contracting party is not in violation of this section if that party discloses information prior to the receipt of the written notification.

(2) Any information that is required to be released or disclosed by a contracting party pursuant to a legal requirement, including an order of a court or regulatory agency, shall not be considered a violation of this section.

SEC. 2. Section 352.7 is added to the Public Utilities Code, to read:

352.7. (a) It shall be unlawful for a person to intentionally disclose proprietary information obtained in the negotiation, execution, or performance of a consulting services contract, as defined in Section 10335.5 of the Public Contract Code, or an information technology contract, as defined in Section 11702 of the Government Code, with the Independent System Operator when the contracting party knew or should have known that the disclosure was likely to cause harm.

(b) A violation of this section shall be punishable as a misdemeanor and may be prosecuted by the Attorney General or by a local district attorney in the district in which the disclosure took place.

(c) (1) For the purposes of this section “proprietary information” shall include any information agreed by the contracting parties to be proprietary, or any information that is designated by the Independent System Operator to be proprietary. The Independent System Operator shall provide written notification to a contracting party of any information that, subsequent to the execution of the contract, is identified to be proprietary. The Independent System Operator shall



make this designation only in cases where the Independent System Operator has reason to believe that the release of this information poses an immediate threat to the health, safety, or welfare of the public or the Independent System Operator has reason to believe that the contracting party intends to sell the information. If the Independent System Operator makes a designation of proprietary information subsequent to the execution of the contract, the Independent System Operator shall make a good faith effort to amend the contract to incorporate the subsequent designation of proprietary information. The Independent System Operator shall specifically identify in the contract any information that is considered to be proprietary. A contracting party is not in violation of this section if that party discloses information prior to the receipt of the written notification.

(2) Any information that is required to be released or disclosed by a contracting party pursuant to a legal requirement, including an order of a court or regulatory agency, shall not be considered a violation of this section.

SEC. 3. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

