

Date of Hearing: August 30, 2024

**ASSEMBLY COMMITTEE ON LOCAL GOVERNMENT**

Juan Carrillo, Chair

AB 892 (Bains) – As Amended August 23, 2024

**SUBJECT:** Kern County Hospital Authority

**SUMMARY:** Subjects the Kern County Hospital Authority (KCHA) and the Kern Medical Center Foundation (Foundation) to certain record keeping requirements, imposes an annual audit requirement, and requires the Foundation to comply with the California Public Records Act (CPRA). Specifically, **this bill:**

- 1) Requires the Foundation to be subject to the CPRA in the same manner as KCHA.
- 2) Requires KCHA to maintain accounting records and report accounting transactions in accordance with generally accepted accounting principles adopted by the Governmental Accounting Standards Board of the Financial Accounting Foundation.
- 3) Requires the Foundation to maintain accounting records and report accounting transactions in accordance with generally accepted accounting principles published and maintained by the Financial Accounting Standards Board.
- 4) Requires, at least once every 12 months, KCHA to engage the services of a qualified accountant of accepted reputation to conduct a financial audit of the accounts and records of both KCHA and the Foundation, and requires KCHA to prepare a report of the audit.
- 5) Requires any financial audit conducted pursuant to this bill to conform to generally accepted government auditing standards and follow principles adopted by the Governmental Accounting Standards Board of the Financial Accounting Foundation.
- 6) Requires KCHA to make copies of the audit reports required by this bill available to the public on KCHA's internet website.
- 7) Provides that, if the Commission on State Mandates determines that this bill contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to current law governing state mandated local costs.
- 8) Finds and declares that a special statute is necessary and that a general statute cannot be made applicable within the meaning of Section 16 of Article IV of the California Constitution because of the unique operating structure of KCHA authorized by state law.

**EXISTING LAW:**

- 1) Requires, under the CPRA, all records produced by or submitted to a public agency to be made available for public inspection. [Government Code (GOV) §§ 7920.000 - 7931.000]

- 2) Applies the CPRA to all corporations and non-profit entities that are created by a state or local public agency, but does not apply it to independent corporations or non-profit entities. (GOV §§ 7920.000 - 7931.000)
- 3) Authorizes, pursuant to the Kern County Hospital Authority Act (Act), the Board of Supervisors of the County of Kern (Kern County) to establish KCHA, and specifies the authority's governance, powers, and procedures [Health and Safety Code (HSC) §§ 101852 – 101856].
- 4) Provides that the purpose of KCHA shall be to do all of the following:
  - a) Provide management, administration, and other controls consistent with the Act as needed to operate the Kern Medical Center (KMC) and maintain its status as a designated public hospital, as specified, and for the operation of additional programs, clinics and other facilities, care organizations, health care service and physician practice plans, and delivery systems that may be affiliated or consolidated with the medical center, to ensure the viability of the health care safety net in Kern County in a manner consistent with the county's requirements under Section 17000 of the Welfare and Institutions Code.
  - b) Provide management, administration, and other controls consistent with the Act to negotiate and enter into contracts to provide or arrange, or provide directly, on a fee-for-service, capitated, or other basis, health care services to individuals including, but not limited to, those covered under Subchapters XVIII (commencing with Section 1395), XIX (commencing with Section 1396), and XXI (commencing with Section 1397aa) of Chapter 7 of Title 42 of the United States Code, those entitled to coverage under private group coverage, private individual coverage, including without limitation, coverage through Covered California, other publicly supported programs, those employed by public agencies or private businesses, and uninsured or indigent individuals. (HSC § 101853).
- 5) Provides, subject to the requirements of the Act, that the Authority shall have, and be charged with, authority for the maintenance, operation, management, control, ownership, or lease of the medical center and other health-related resources (HSC § 101853).
- 6) Includes, among the powers and duties of KCHA, the authority to establish nonprofit, for-profit, or other entities necessary to carry out the duties of the authority (HSC § 101855).
- 7) Requires KCHA to comply with the Meyers-Milias-Brown Act (MMBA), the CPRA, and the Ralph M. Brown Act (Brown Act), as specified (HSC § 101855).

**FISCAL EFFECT:** Unknown

**COMMENTS:**

- 1) **Author's Statement.** According to the author, "The San Joaquin Valley is already in the midst of a healthcare workforce shortage with an insufficient number of doctors, nurses, and allied health providers to care for the Valley's growing population. As our area's only Level II Trauma Center, the stability and success of Kern Medical is critical to the overall health care of the entire region. AB 892 requires that the Kern County Hospital Authority and its

Foundation to operate in compliance with the accounting and recordkeeping best practices established by the Government Accounting Standards Board and Financial Accounting Standards Board. The bill also ensures transparency and accountability by requiring compliance with the California Public Records Act as well as the performance of an annual audit.”

2) **Bill Summary.** This bill imposes a number of requirements on KCHA and the Foundation, as follows:

a) **Requirements on KCHA.** This bill Requires KCHA to maintain accounting records and report accounting transactions in accordance with generally accepted accounting principles adopted by the Governmental Accounting Standards Board of the Financial Accounting Foundation.

At least once every 12 months, KCHA must hire an accountant to conduct a financial audit of the accounts and records of both KCHA and the Foundation. KCHA must prepare a report of each audit and make them available to the public on its website. Audits must conform to generally accepted government auditing standards and follow principles adopted by the Governmental Accounting Standards Board of the Financial Accounting Foundation.

b) **Requirements on the Foundation.** This bill requires the Foundation to maintain accounting records and report accounting transactions in accordance with generally accepted accounting principles published and maintained by the Financial Accounting Standards Board. This bill also requires the Foundation to be subject to the CPRA.

This bill is sponsored by SEIU California.

3) **Background.** The CPRA was enacted in 1968, expressly declaring “access to information concerning the conduct of the people's business is a fundamental and necessary right of every person in this state.” Generally speaking, unless a record is statutorily exempted from the CPRA, all records produced by or submitted to a public agency must be made available for public inspection. Exemptions to the CPRA must be narrowly construed and the public agency bears the burden of proving an exemption applies.

The CPRA applies to all state and local agencies, as well as a board, commission, committee, or other multimember body that governs a private corporation, limited liability company (LLC), or other entity that either:

- Is created by the elected legislative body to exercise authority delegated by the elected governing body to a private corporation, LLC, or other entity; or
- Receives funds from a local agency and includes a member of the legislative body that created the private corporation, LLC, or other entity.

A state or local agency cannot avoid the disclosure requirements mandated by the CPRA by creating a private corporation, LLC, or other entity.

- 4) **Kern County Hospital Authority.** AB 2546 (Salas), Chapter 613, Statutes of 2014, authorized the Kern County Board of Supervisors to establish KCHA to operate KMC and maintain its status as a designated public hospital. The authority was also authorized for the operation of additional programs, clinics and other facilities, care organizations, health care service and physician practice plans, and delivery systems that may be affiliated or consolidated with KMC, to ensure the viability of the health care safety net in Kern County. Among its many provisions, AB 2546 required KCHA to comply with the CPRA, as well as the Brown Act and the MMBA, which provides for collective bargaining for California's municipal, county, and local special district employers and employees.

AB 1350 (Salas), Chapter 790, Statutes of 2015, made a number of changes to the Act, primarily addressing employee relations and benefits, as well as other technical, clarifying, and conforming changes. According to the Authority's website, "In October 2015, the Kern County Board of Supervisors approved its related Ordinance and in 2016, Kern Medical successfully transitioned to a Hospital Authority. A Hospital Authority is a public entity whose sole purpose is to operate a hospital, clinics and provide health care services to the entire community. It is run by an independent Board of Governors and continues to be a designated public hospital."

- 5) **Kern Medical Center Foundation.** Created in 2008, the Foundation is a non-profit corporation formed under section 501(c)(3) of the Internal Revenue Code. It raises money to support the KMC for – according to its website – “patient services, facilities, equipment and for research efforts.” Because the Foundation is a 501(c)(3), contributions made to it are tax deductible under state and federal law.

Tax-exempt organizations are required to file Internal Revenue Service (IRS) Form 990 each year and the IRS requires all U.S. tax-exempt nonprofits to make their three most recent Form 990s – and all related supporting documents – public. According to the Form 990 the Foundation filed in November 2023, it received just over \$1.664 million in grants and contributions in 2022, had \$0 in liabilities, and had total net assets of just over \$4 million. The Foundation employs a staff of approximately five people.

In addition to being able to receive contributions from private individuals and groups, the Foundation can also receive money from the state and federal governments to support the KMC. According to its most recent Form 990 filing, the Foundation has received many grants and awards, including:

- \$9.2 million from the California Health Facilities Authority for Kern Medical Pediatrics inpatient and outpatient renovations.
- \$2.9 million from the California Department of Health Care Access and Information to increase efforts, and expand health career opportunities for Kern County students.
- \$2.2 million in Song Brown Healthcare Workforce Training funding to support primary care residency programs.
- \$780,000 from CalMedForce to support Internal Medicine, Emergency Medicine, and Obstetrics and Gynecology Residency Programs.

- \$600,000 from the Federal Communications Commission to buy information technology equipment to assist physicians with remote visits and remote work amid the challenges posed by COVID-19.

The Foundation is a completely separate entity from the KCHA. As a non-profit entity, it not only has to file IRS Form 990, which is a public record, it also has to file annual registration forms with the California Attorney General's Office, a Statement of Information with the California Secretary of State's Office, and additional forms with the California Franchise Tax Board.

6) **Policy Considerations.** The Committee may wish to consider the following:

a) **Subjecting a Non-profit Organization to the CPRA.** In support of the provision of this bill that requires the Foundation – a private, non-profit organization – to be subject to the CPRA (which generally applies to governmental entities), the sponsors provided the following references:

i) **2022 Court Case.** In a recent court case, *Community Action Agency of Butte County v. Superior Court of Butte County*, 79 Cal.App.5th 221 (2022), the court ruled that a non-profit entity could only be subject to the CPRA under “exceptional circumstances,” such as when, as a practical matter, the nonprofit operates as a local public entity. The court adopted a four-factor test to determine whether a private entity should be treated as the functional equivalent of a governmental agency and thus be subject to the CPRA and other requirements, such as the Brown Act. Those four factors are:

- (1) Whether the entity performs a government function;
- (2) The extent to which the government funds the entity's activities;
- (3) The extent of government involvement in the entity's activities; and
- (4) Whether the entity was created by the government.

It is not clear that the Foundation would be subject to the CPRA under this test. This bill circumvents the court's test by using statute to apply the CPRA to the Foundation.

ii) **2002 Attorney General Opinion.** In 2002, Attorney General Bill Lockyer was asked to render an opinion on whether the Brown Act and the CPRA applied to the meetings of the governing board of a private, nonprofit corporation formed to provide programming for a cable television channel pursuant to the cable television's franchise agreement with a city.

In Opinion No. 01-401 issued on March 14, 2002, the Attorney General wrote that because the non-profit corporation was formed and received authority delegated by a city council – a local agency under the Brown Act and the CPRA – the law subjected the non-profit corporation to the Brown Act and the CPRA. Furthermore, the opinion noted the non-profit corporation itself was actually a legislative body under the

Brown Act and the CPRA, because another local agency appointed three of the nonprofit corporation's five directors and approved the other two. None of these circumstances exist in the relationship between the KCHA and the Foundation, which is why the Foundation cannot be deemed to be subject to the CPRA or the Brown Act under current law.

The Committee may wish to consider the precedent of subjecting a specific private, non-profit entity to the CPRA directly via statute and the potential implications of doing so, both for this specific non-profit organization and more generally as a policy approach.

b) **Subjecting a Non-Profit Entity to an Audit by a Local Governmental Organization.**

This bill requires KCHA to audit the Foundation at least once every 12 months, and post the audit reports on the KCHA website. As noted above, the Foundation is subject to numerous reporting requirements to ensure it manages and spends taxpayer funds in accordance with the law. The Committee may wish to consider whether this requirement is redundant or necessary, and the potential ramifications of this policy.

- 7) **Previous Legislation.** AB 722 (Bonta), Chapter 269, Statutes of 2023, extended from January 1, 2024, to January 1, 2035, limitations on the Alameda Health System's ability to contract with physicians and surgeons not subject to a collective bargaining agreement.

AB 1350 (Salas), Chapter 790, Statutes of 2015, made a number of changes to the Act, primarily addressing employee relations and benefits, as well as other technical, clarifying, and conforming changes.

AB 2546 (Salas), Chapter 613, Statutes of 2014, authorized the Kern County Board of Supervisors to establish the Authority to operate the medical center and maintain its status as a designated public hospital.

AB 276 (Alejo), Chapter 686, Statutes of 2012, authorized the Monterey County Board of Supervisors to establish the Central Coast Hospital Authority.

AB 2374 (Bates), Chapter 816, Statutes of 1996, authorized the County of Alameda to establish a hospital authority to manage the respective county hospitals and county programs of the Alameda County Medical Center.

- 8) **Arguments in Support.** SEIU California, sponsor of this bill, writes, "This bill provides important reforms to the Kern County Hospital Authority, guaranteeing a strong public hospital and healthcare delivery systems that meet the needs of its workforce and the communities it serves. AB 892 will increase public accountability and financial transparency at the Kern County Hospital Authority (KCHA), a public, local body established to guarantee continued access to quality care at Kern Medical Center and its network of outpatient clinics and services. Specifically, this bill will guarantee that the provisions of the California Public Records Act (CPRA) are applied to records of not only the KCHA, but the Kern Medical Center Foundation (Foundation) too. Importantly, this bill will also guarantee that:

- KCHA and the Foundation maintain financial records that are in keeping with account standards under Governmental Accounting Standards Board (GASB) and Financial Accounting Standards Board (FASB), respectively
- KCHA completes an annual audit that is inclusive of its Foundation, consistent with GASB
- KCHA make annual audits publicly accessible

“For well over a century, Kern County’s diverse communities have been served by a public hospital and health system – Kern Medical Center (KMC). Kern County currently ranks 53rd of 58 California counties on health outcomes and 57th on health factors, like access to care. This legislation not only affirms CPRA’s applicability to the Foundation but also increases the overall financial transparency at the publicly funded KCHA and its Foundation, which is critical to improving care for its patients and community.”

9) **Arguments in Opposition.** None on file.

**REGISTERED SUPPORT / OPPOSITION:**

**Support**

SEIU California [SPONSOR]

**Opposition**

None on file

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