

Date of Hearing: April 19, 2023

ASSEMBLY COMMITTEE ON LOCAL GOVERNMENT

Cecilia Aguiar-Curry, Chair

AB 892 (Bains) – As Introduced February 14, 2023

SUBJECT: Kern County Hospital Authority.

SUMMARY: Subjects all entities controlled, owned, administered, or funded by the Kern County Hospital Authority (Authority) to the Meyers-Milius-Brown Act (MMBA), the Ralph M. Brown Act (Brown Act), and the California Public Records Act (CPRA). Specifically, **this bill:**

- 1) Requires all entities controlled, owned, administered, or funded by the Authority to be subject to the provisions of the MMBA, the Brown Act, and the CPRA, as specified.
- 2) 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.

EXISTING LAW:

- 1) Authorizes, pursuant to the Kern County Hospital Authority Act (Act), the Board of Supervisors of the County of Kern (Kern County) to establish the Authority, and specifies the Authority's governance, powers, and procedures [Health and Safety Code (HSC) §§ 101852 – 101856].
- 2) Provides that the purpose of the Authority 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 County Medical Center (medical center) 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).

- 3) 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).
- 4) Includes, among the powers and duties of the Authority, the authority to establish nonprofit, for-profit, or other entities necessary to carry out the duties of the authority (HSC § 101855).
- 5) Requires the Authority to comply with the MMBA, the CPRA, and the Brown Act, as specified (HSC § 101855).

FISCAL EFFECT: This bill is keyed fiscal and contains a state-mandated local program.

COMMENTS:

- 1) **Author's Statement and Bill Summary.** According to the author, "As the closure of Madera Community Hospital has shown, the loss of public hospitals and medical facilities can strain already limited health care resources and further restrict access to care in California's most disadvantaged communities. The San Joaquin Valley is already in the midst of a health care 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. As a public agency, AB 892 requires that the Kern County Hospital Authority operate in compliance with (the Meyers-) Milias-Brown Act, Ralph M. Brown Act, and the California Public Records Act to ensure Kern Medical is operated transparently and with accountability to the public and the workforce."

This bill specifies that all entities controlled, owned, administered, or funded by the Authority are subject to the MMBA, the Brown Act, and the CPRA.

This bill is sponsored by Service Employees International Union (SEIU) California.

- 2) **Background.** 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. 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 the medical center, to ensure the viability of the health care safety net in Kern County. Among its many provisions, AB 2546 required the Authority to comply with the MMBA, the CPRA, and the Brown Act.

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."

- 3) **Brown Act.** The Brown Act was originally enacted in 1953 and has been amended numerous times since then. The legislative intent of the Brown Act was expressly declared in its original statute, which remains unchanged:

“The Legislature finds and declares that the public commissions, boards and councils and other public agencies in this State exist to aid in the conduct of the people’s business. It is the intent of the law that their actions be taken openly and that their deliberations be conducted openly. 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.”

The Brown Act generally requires meetings to be noticed in advance, including the posting of an agenda, and generally requires meetings to be open and accessible to the public. The Brown Act also generally requires members of the public to have an opportunity to comment on agenda items, and generally prohibits deliberation or action on items not listed on the agenda.

The Brown Act defines “local agency” to mean a county, city, whether general law or chartered, city and county, town, school district, municipal corporation, district, political subdivision, or any board, commission or agency thereof, or other local public agency.

The Brown Act defines “legislative body” to mean:

- a) The governing body of a local agency or any other local body created by state or federal statute.
- b) A commission, committee, board, or other body of a local agency, whether permanent or temporary, decision-making or advisory, created by charter, ordinance, resolution, or formal action of a legislative body. Advisory committees composed solely of the members of the legislative body that are less than a quorum of the legislative body are not legislative bodies. Standing committees of a legislative body, irrespective of their composition, that have a continuing subject matter jurisdiction or a meeting schedule fixed by charter, ordinance, resolution, or formal action of a legislative body are legislative bodies.
- c) A board, commission, committee, or other multimember body that governs a private corporation, limited liability company, or other entity that either:
 - i) Is created by the elected legislative body in order to exercise authority that may lawfully be delegated by the elected governing body to a private corporation, limited liability company, or other entity; or,
 - ii) Receives funds from a local agency and the membership of whose governing body includes a member of the legislative body of the local agency appointed to that governing body as a full voting member by the legislative body of the local agency.

The Brown Act defines a “meeting” as “any congregation of a majority of the member of a legislative body at the same time and location, including teleconference locations, to hear, discuss, deliberate, or take action on any item that is within the subject matter jurisdiction of the legislative body.”

The Brown Act allows a district attorney or any interested person to seek a judicial determination that an action taken by a local agency’s legislative body violates specified provisions of the Brown Act – including the provisions governing open meeting requirements, teleconferencing, and agendas – and is therefore null and void.

- 4) **Related Legislation.** AB 722 (Bonta) prohibits, indefinitely, the Alameda Health System Hospital Authority (AHS) from entering into a contract with any other person or entity, including, but not limited to, a subsidiary or other entity established by AHS, to replace services being provided by physicians and surgeons who are employed by AHS and in a recognized collective bargaining unit without clear and convincing evidence that the needed medical care can only be delivered cost effectively by another person or entity. This committee passed AB 722 on a 7-1 vote on March 29, 2023.
- 5) **Previous Legislation.** 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.

- 6) **Arguments in Support.** SEIU California, sponsor of this bill, writes, “For well over a century, Kern County’s diverse communities have been served by a public hospital and health system – Kern Medical Center (KMC). With Kern County ranking 53rd of 58 California counties on health outcomes, and 57th on health factors, like access to care, KMC is critical to improving the health of the region’s most underserved and historically marginalized communities. As the area’s only Level II Trauma Center, KMC’s care extends beyond county lines.

“In the 2010s, with mounting financial concerns that threatened the long-term sustainability of a public hospital and health system in Kern, the legislature took action. AB 2546 (Chaptered, 2014) followed by AB 1350 (Chaptered, 2015) created a new pathway forward with the creation of the Kern County Hospital Authority (KCHA). In 2016, after these legislative action and subsequent actions by the Kern County Board of Supervisors, KMC was transitioned to the new hospital authority, a public entity that exists solely to operate the hospital and its network of clinics, health facilities, and services.

“The enabling KCHA legislation, and subsequent statute, did include key language regarding the application of the Ralph M. Brown Act (Brown Act), the California Public Records Act (CPRA), and the Meyer-Milias-Brown Act (MMBA). That being said, the Authority has evolved since its formation. The need to reaffirm the applicability of the Brown Act, CPRA, and MMBA is applied all entities controlled, owned, administered, or funded by KCHA has become evident. AB 892 does just that.

“KCHA’s Board of Governors, appointed by the Kern County Board of Supervisors, have a responsibility to not only maintain a designated public hospital, but to be responsive to the people of Kern and surrounding counties. With 70% of their patients on Medi-Cal and a patient population that is disproportionately people of color, KCHA must make sure that all voices - regardless of income, race, or immigration status - have equal access to key information and decision makers that impact their care. The transparent operation of KCHA is critical to ensuring accountability and must include opportunities for stakeholders from all backgrounds to provide input on the operation of this vital public resource. KCHA must also guarantee that all its employees have equal access to representation.

“A number of circumstances locally have brought these commitments into question for SEIU and our members at KCHA. Regrettably, since taking over, KCHA has shown a lack of public transparency, including eliminating much of their own oversight, granting extensive power and key decision making to their CEO and a third-party firm. KCHA also created subsidiaries with no public accountability. KCHA is engaged in legal cases related to the formation of the Kern Medical Surgery Center, LLC – cases with implications to its workforce and patients. Over the same time, care challenges have mounted and ability to train the next generations of physicians has been challenged. With worsening staff turnover, and over half of RN positions unfilled with permanent staff, the California Dept. of Public Health is now receiving complaints at three times the rate of similarly sized general acute hospitals.

“We are grateful to have this legislative vehicle to not only reaffirm the Brown Act, CPRA, and MMBA applicability to KCHA, but to start a broader conversation on how to improve and reform KCHA for its patients, workforce, and community. In closing, AB 892 is a critical reform to ensure KMC is operated in a transparent and public manner. It guarantees that KCHA and its entities are held to the same standards of public disclosure and accessibility as contained in the Brown Act and CPRA. For decades, the Brown Act and CPRA have brought public transparency to public entities, including local agencies. In clarifying that the MMBA applies to all employees of entities controlled, owned, administered, or funded by KCHA, this bill will also guarantee our critical health workforce has a voice on the job. We are grateful to have this legislative vehicle to not only reaffirm the Brown Act, CPRA, and MMBA applicability to KCHA, but to start a broader conversation on how to improve and reform KCHA for its patients, workforce, and community.”

- 7) **Arguments in Opposition.** None on file.
- 8) **Double-Referral.** This bill is double-referred to the Assembly Public Employment and Retirement Committee, where it passed on a 6-1 vote on March 22, 2023.

REGISTERED SUPPORT / OPPOSITION:

Support

Service Employees International Union California [SPONSOR]

Opposition

None on file

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