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CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

ASSEMBLY BILL

No. 438

**Introduced by Assembly Member Williams
(Coauthor: Assembly Member Fuentes)**

February 14, 2011

An act to amend Sections 19104 and 19116 of, and to add Section 19104.5 to, the Education Code, relating to libraries.

LEGISLATIVE COUNSEL'S DIGEST

AB 438, as amended, Williams. County free libraries: withdrawal: use of private contractors.

Existing law provides that the county boards of supervisors may establish and maintain, within their respective counties, county free libraries pursuant to specified provisions of law. Existing law provides that the board of trustees, common council, or other legislative body of any city or the board of trustees of any library district may, on or before January 1st of any year, notify the county board of supervisors that the city or library district no longer desires to be a part of the county free library system, as specified.

This bill would impose specified requirements if the board of trustees, common council, or other legislative body of a city or the board of trustees of a library district intends to withdraw from the county free library system and operate the city’s or library district’s library or libraries with a private contractor that will employ library staff to achieve cost savings, *unless the library or libraries are funded only by the proceeds of a special tax imposed by the city or library district.* These requirements would include, but not be limited to, publishing notice of the contemplated action in a specified manner, clearly demonstrating that the contract will result in actual overall cost savings to the city or library district, prohibiting the contract from causing the displacement of city or library district employees, and imposing specified requirements on contracts for library services in excess of \$100,000 annually. The bill would also provide that its provisions do not preclude a city, library district, or local government from adopting more restrictive rules regarding the contracting of public services.

Vote: majority. Appropriation: no. Fiscal committee: no.
 State-mandated local program: no.

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

1 SECTION 1. Section 19104 of the Education Code is amended
 2 to read:
 3 19104. (a) The board of trustees, common council, or other
 4 legislative body of a city or the board of trustees of a library district
 5 may, on or before January 1 of any year, notify the county board
 6 of supervisors that the city or library district no longer desires to
 7 be a part of the county free library system. The notice shall be
 8 accompanied by a statement complying with the requirements of
 9 Chapter 8 (commencing with Section 54900) of Part 1 of Division
 10 2 of Title 5 of the Government Code. The clerk of the board of
 11 supervisors shall file the statement with the county assessor and
 12 the State Board of Equalization. Thereafter the city or library
 13 district shall cease to participate in the benefits of the county free
 14 library system, and the property situated in the city or library
 15 district shall not be liable for taxes for county free library purposes.
 16 (b) If the board of trustees, common council, or other legislative
 17 body of a city or the board of trustees of a library district intends
 18 to withdraw from the county free library system and operate the
 19 city’s or the district’s library or libraries with a private contractor

1 that will employ library staff to achieve cost savings, the
2 requirements of Section 19104.5 shall apply, *unless the library or*
3 *libraries are funded only by the proceeds of a special tax imposed*
4 *by the city or district pursuant to Article 3.5 (commencing with*
5 *Section 50075) of Chapter 1 of Part 1 of Division 1 of Title 5 of*
6 *the Government Code.*

7 SEC. 2. Section 19104.5 is added to the Education Code, to
8 read:

9 19104.5. (a) If the board of trustees, common council, or other
10 legislative body of a city or the board of trustees of a library district
11 intends to withdraw from the county free library system and operate
12 the city's or the district's library or libraries with a private
13 contractor that will employ library staff to achieve cost savings,
14 all of the following requirements shall apply:

15 (1) At least once a week for four consecutive weeks prior to
16 taking any action, the board of trustees, common council, or other
17 legislative body of the city or the board of trustees of the library
18 district shall publish, in a newspaper designated by it and circulated
19 throughout the city or library district, notice of the contemplated
20 action, giving the date and place of the meeting at which the
21 contemplated action is proposed to be taken.

22 (2) The board of trustees, common council, or other legislative
23 body of a city or the board of trustees of a library district shall
24 clearly demonstrate that the contract will result in actual overall
25 cost savings to the city or library district, provided that, in
26 comparing costs, all of the following occur:

27 (A) The city or library district's additional cost of providing the
28 same services as proposed by the contract shall be included. These
29 additional costs shall include the salaries and benefits of additional
30 staff that would be needed and the cost of additional space,
31 equipment, and materials needed to perform the necessary functions
32 of the library.

33 (B) The city or library district's indirect overhead costs shall
34 not be included unless those costs can be attributed solely to the
35 function in question and would not exist if that function was not
36 performed by the city or library district. For purposes of this
37 subparagraph, "indirect overhead costs" means the pro rata share
38 of existing administrative salaries and benefits, rent, equipment
39 costs, utilities, and materials.

1 (C) The cost of a contractor providing a service for any
2 continuing city or library district costs that would be directly
3 associated with the contracted function shall be included.
4 Continuing city or library district costs shall include, but not be
5 limited to, costs for inspection, supervision, and monitoring.

6 (3) The contract shall not be approved solely on the basis that
7 savings will result from lower contractor pay rates or benefits.
8 Contracts shall be eligible for approval if the contractor's wages
9 are at the industry's level and do not undercut city or library district
10 pay rates.

11 (4) The contract shall not cause the displacement of city or
12 library district employees. Displacement includes layoff, demotion,
13 involuntary transfer to a new classification, involuntary transfer
14 to a new location requiring a change of residence, and time base
15 reductions. Displacement does not include changes in shifts or
16 days off, nor does it include reassignment to other positions within
17 the same classification and general location or employment with
18 the contractor, so long as wages and benefits are comparable to
19 those paid by the city or library district.

20 (5) The overall cost savings of the contract shall be large enough
21 to ensure that the savings will not be eliminated by private sector
22 and city or library district cost fluctuations that could normally be
23 expected during the contracting period.

24 (6) The amount of the overall cost savings of the contract shall
25 clearly justify the scope and duration of the contract.

26 (7) The contract shall be awarded through a publicized,
27 competitive bidding process.

28 (8) The contract shall include specific provisions pertaining to
29 the qualifications of the staff that will perform the work under the
30 contract, as well as assurances that the contractor's hiring practices
31 meet applicable nondiscrimination standards.

32 (9) The potential for future economic risk to the city or library
33 district from potential contractor rate increases shall be minimal.

34 (10) The contract shall be with a firm. For purposes of this
35 paragraph, a "firm" means a corporation, limited liability company,
36 partnership, nonprofit organization, or sole proprietorship.

37 (11) The contract shall provide that it may be terminated at any
38 time by the city or library district without penalty if *the contractor*
39 *fails to perform and* notice is provided within 30 days of
40 termination.

1 (12) The potential economic advantage of the contract shall not
2 be outweighed by the public's interest in having a particular
3 function performed directly by the city or library district.

4 (13) If the contract is for library services in excess of one
5 hundred thousand dollars (\$100,000) annually, all of the following
6 shall occur:

7 (A) The city or library district shall require the contractor to
8 disclose all of the following information as part of its bid,
9 application, or answer to a request for proposal:

10 (i) A description of all charges, claims, or complaints filed
11 against the contractor with any federal, state, or local administrative
12 agency during the prior 10 years.

13 (ii) A description of all civil complaints filed against the
14 contractor in any state or federal court during the prior 10 years.

15 (iii) A description of all state or federal criminal complaints or
16 indictments filed against the contractor, or any of its officers,
17 directors, or managers, at any time.

18 (iv) A description of any debarments of the contractor by any
19 public agency or licensing body at any time.

20 (B) The city or library district shall include in the contract
21 specific, measurable performance standards and provisions for a
22 performance audit by the city or library district, or an independent
23 auditor approved by the city or library district, to determine
24 whether the performance standards are being met and whether the
25 contractor is in compliance with applicable laws and regulations.
26 The city or library district shall not renew or extend the contract
27 prior to receiving and considering the audit report.

28 (C) The contract shall include provisions for an audit by the
29 city or library district, or an independent auditor approved by the
30 city or library district, to determine whether and to what extent the
31 anticipated cost savings have actually been realized. The city or
32 library district shall not renew or extend the contract ~~prior to~~ *before*
33 receiving and considering the audit report.

34 (b) This section does not preclude a city, library district, or local
35 government from adopting more restrictive rules regarding the
36 contracting of public services.

37 SEC. 3. Section 19116 of the Education Code is amended to
38 read:

39 19116. (a) (1) Sections 19104 and 19105 are not applicable
40 to the withdrawal of a city or library district from the county free

1 library system in Los Angeles County or Riverside County. The
2 legislative body of a city or the board of trustees of a library
3 district, whose jurisdiction is within the County of Los Angeles
4 or the County of Riverside, may notify the board of supervisors
5 for Los Angeles County or Riverside County, as appropriate, that
6 the city or library district no longer desires to be a part of the
7 county free library system. The notice shall state whether the city
8 or library district intends to acquire property pursuant to
9 subdivision (c). The board of supervisors shall transmit a copy of
10 the notice to the Los Angeles County Assessor or Riverside County
11 Assessor, as appropriate, the Los Angeles County Auditor or
12 Riverside County Auditor, as appropriate, and the State Board of
13 Equalization.

14 (2) If the city's legislative body or the library district's board
15 of trustees intends to withdraw from the county free library system
16 and operate the city's or the district's library or libraries with a
17 private contractor that will employ library staff to achieve cost
18 savings, the requirements of Section 19104.5 shall also apply,
19 *unless the library or libraries are funded only by the proceeds of*
20 *a special tax imposed by the city or district pursuant to Article 3.5*
21 *(commencing with Section 50075) of Chapter 1 of Part 1 of*
22 *Division 1 of Title 5 of the Government Code.*

23 (b) When a city or library district files a notice pursuant to
24 subdivision (a), it shall remain a member of the county free library
25 system until July 1 of the base year or the date on which property
26 is transferred pursuant to subdivision (c), whichever date is later.
27 Upon ceasing to be a member of the county free library system,
28 the city or library district shall not participate in any benefits of
29 the county free library system, and shall assume the responsibility
30 for the provision of library services within its jurisdiction. Unless
31 otherwise agreed by July 1 of the base year in writing by the Board
32 of Supervisors of Los Angeles County or the Board of Supervisors
33 of Riverside County, as appropriate, and the withdrawing city or
34 library district, an amount of property tax revenue equal to the
35 property tax revenues allocated to the county free library pursuant
36 to Article 2 (commencing with Section 96) of Chapter 6 of Part
37 0.5 of Division 1 of the Revenue and Taxation Code in the fiscal
38 year prior to the base year and that were derived from property
39 situated within the boundaries of the withdrawing entity shall be
40 allocated to and used to maintain library services by the

1 withdrawing entity in the base year and, adjusted forward, in each
2 fiscal year thereafter at the same time allocations are made pursuant
3 to Article 2 (commencing with Section 96) of Chapter 6 of Part
4 0.5 of Division 1 of the Revenue and Taxation Code. This
5 subdivision shall not apply to property tax revenues that have been
6 pledged to repay bonded indebtedness of the county free library
7 system.

8 (c) If there are one or more county library facilities within the
9 territorial boundaries of the withdrawing entity at the time the
10 withdrawing entity provides notice pursuant to subdivision (a),
11 the withdrawing entity shall have the right to acquire any or all of
12 those facilities from the county and the county shall, no later than
13 July 1 of the base year, transfer to the withdrawing entity each
14 facility to be acquired and the personal property therein related to
15 the provision of library services. If the facility or personal property
16 was purchased with bond proceeds or other forms of indebtedness,
17 acquisition shall only take place if the withdrawing entity assumes
18 any remaining indebtedness and in no way impairs the repayment
19 thereof. If the withdrawing entity opts not to acquire any facilities
20 or personal property, the county at its discretion may dispose of
21 the facilities or personal property or convert the use of those
22 facilities or personal property, including transferring collections
23 and other personal property to other sites and converting facilities
24 to other purposes. If the withdrawing entity opts to acquire any
25 facilities or personal property, the acquisition prices shall be as
26 follows unless otherwise provided for by statute or contract:

27 (1) Each county library facility which, for ~~the~~ purposes of this
28 section, shall include the real property upon which the facility is
29 located and any fixtures therein and shall not include computer
30 systems and software, shall be transferred for the lesser of:

31 (A) No cost, if the facility was donated to the county by the
32 withdrawing entity.

33 (B) The price paid to the withdrawing entity by the county for
34 the facility, if the county bought the facility from the withdrawing
35 entity. However, if the county constructed capital improvements
36 to the facility after it was bought from the withdrawing entity, the
37 county's total out-of-pocket costs for the capital improvement
38 excluding any costs for routine repairs, restoration, or maintenance,
39 shall be added to the price.

1 (C) The fair market value of the facility. However, if any portion
 2 of the facility was donated to the county by the withdrawing entity
 3 or if any moneys were donated by the withdrawing entity ~~towards~~
 4 *toward* the county's construction or acquisition of the facility or
 5 any portion thereof, the value of the donation shall be subtracted
 6 from the fair market value.

7 (2) Any personal property within the facility related to the
 8 provision of library services, including books and resource
 9 materials, computer systems and software, furniture, and
 10 furnishings, shall be transferred for the lesser of:

11 (A) No cost, if the property was donated to the county by the
 12 withdrawing entity.

13 (B) The fair market value of the personal property. However,
 14 on or before the March 1 preceding the July 1 of the base year, the
 15 county librarian may designate collections of resource books and
 16 materials that are unique in, and integral to, the county free library
 17 system to be special collections. The special collections shall be
 18 acquired by the withdrawing entity only upon mutually agreeable
 19 terms and conditions.

20 (d) If a facility transferred pursuant to subdivision (c) serves
 21 residents of surrounding jurisdictions, the board of supervisors
 22 governing the county free library system may require, as a
 23 condition of transferring the facility, that the library services
 24 provided by the withdrawing entity to its residents also be available
 25 on the same basis to the residents of the surrounding jurisdictions.
 26 However, if the withdrawing entity contributes to the provision of
 27 library services from other city funds, or through taxes,
 28 assessments, or fees of its residents, the withdrawing entity may
 29 provide additional services to its residents. If the requirement to
 30 provide regional services is imposed and, unless otherwise agreed
 31 in writing by the county and the withdrawing entity by July 1 of
 32 the base year, an amount of property tax revenues equal to the
 33 property tax revenues derived from property situated in the
 34 surrounding jurisdictions ~~which~~ *that* were, in the fiscal year ~~prior~~
 35 *to before* the base year, allocated to the county free library system
 36 pursuant to Article 2 (commencing with Section 96) of Chapter 6
 37 of Part 0.5 of Division 1 of the Revenue and Taxation Code shall
 38 be allocated to and used to maintain library services by the
 39 withdrawing entity in the base year and, adjusted forward, in each
 40 fiscal year thereafter at the same time other allocations are made

1 pursuant to Article 2 (commencing with Section 96) of Chapter 6
2 of Part 0.5 of Division 1 of the Revenue and Taxation Code. This
3 subdivision shall not apply to property tax revenues that have been
4 pledged to repay bonded indebtedness. If a surrounding jurisdiction
5 subsequently provides notice of its intent to withdraw from the
6 county free library system pursuant to subdivision (a), on the date
7 the surrounding jurisdiction ceases to participate in the benefits of
8 the county free library system pursuant to subdivision (b), the
9 withdrawing entity shall no longer be required to make library
10 services available to the residents of the surrounding jurisdiction
11 and property tax revenues derived from property situated in the
12 surrounding jurisdiction shall no longer be allocated to the
13 withdrawing entity pursuant to this subdivision.

14 (e) For purposes of this section, the following terms are defined
15 as follows:

16 (1) “Base year” means the fiscal year commencing on the July
17 1 following the December 2 following the date of the notice given
18 pursuant to subdivision (a) of this section.

19 (2) “Fair market value” means:

20 (A) Any value agreed upon by the withdrawing entity and the
21 county.

22 (B) If no agreement as to value is reached by the March 1
23 preceding the July 1 of the base year, the value assigned by an
24 appraiser agreed upon by the withdrawing entity and the county.

25 (C) If no agreement as to the appointment of an appraiser is
26 reached pursuant to subparagraph (B) by the April 1 preceding the
27 July 1 of the base year, the value assigned by an appraiser agreed
28 upon between the withdrawing entity’s appraiser and the county’s
29 appraiser.

30 (D) If no agreement as to the appointment of an appraiser is
31 reached pursuant to subparagraph (C) by the May 1 preceding the
32 July 1 of the base year, the value assigned by a ~~state-certified~~
33 *state-certified* appraiser designated by the withdrawing entity. The
34 designated appraiser shall provide the appraisal in writing to the
35 county no later than the June 1 preceding the July 1 of the base
36 year.

37 (E) The withdrawing entity shall reimburse the county for any
38 appraisal costs the county incurs in determining the fair market
39 value pursuant to this section.

1 (3) “Surrounding jurisdictions” means cities and library districts
2 that are adjacent to the withdrawing entity and tax rate areas in
3 unincorporated areas of the county that are wholly or partially
4 within the withdrawing entity’s sphere of influence, that are within
5 the county free library system, and that have no facility within
6 their territorial boundaries providing library services at the time
7 the withdrawing entity provides notice pursuant to subdivision (a).

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