

AMENDED IN ASSEMBLY JUNE 1, 2011  
AMENDED IN ASSEMBLY MAY 27, 2011  
AMENDED IN ASSEMBLY APRIL 4, 2011  
AMENDED IN ASSEMBLY MARCH 29, 2011  
AMENDED IN ASSEMBLY MARCH 16, 2011  
CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

**ASSEMBLY BILL**

**No. 438**

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

February 14, 2011

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An act to amend ~~Section 19106~~ *Sections 19104 and 19116* of, and to add ~~Sections 19106.2, 19106.5, and 19106.8~~ *Section 19104.5* to, the Education Code, relating to libraries.

LEGISLATIVE COUNSEL'S DIGEST

AB 438, as amended, Williams. County free libraries: ~~notice-~~  
*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 ~~requires~~ *provides that* the board of trustees, common council, or other legislative body of any city or the board of trustees of any library district, ~~before giving notice to the county board of supervisors that the city or library district desires to become a part of, or withdraw from, the county free library system, to provide notice of the contemplated action in a specified manner~~ *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 revise those notice requirements and would additionally require that notice to be mailed or delivered to persons requesting the notice at least 10 days prior to the public hearing on the matter. The bill would authorize a city or library district to charge a fee that is reasonably related to the costs of providing this requested notice. The bill would prohibit a failure to receive notice pursuant to these provisions from constituting grounds to invalidate the actions of a city or library district for which notice was not provided.~~

*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. 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 ~~any~~ a city or the board of trustees of ~~any~~ a  
 5     library district may, on or before January 1st 1 of any year, notify  
 6     the *county* board of supervisors that the city or library district no  
 7     longer desires to be a part of the county free library system. The  
 8     notice shall be accompanied by a statement complying with the  
 9     requirements of Chapter 8 (commencing with Section 54900) of  
 10    Part 1 of Division 2 of Title 5 of the Government Code. The clerk

1 of the board of supervisors shall file the statement with the county  
2 assessor and the State Board of Equalization. Thereafter the city  
3 or library district shall cease to participate in the benefits of the  
4 county free library system, and the property situated in the city or  
5 library district shall not be liable to for taxes for county free library  
6 purposes.

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

13 *SEC. 2. Section 19104.5 is added to the Education Code, to*  
14 *read:*

15 *19104.5. (a) If the board of trustees, common council, or other*  
16 *legislative body of a city or the board of trustees of a library*  
17 *district intends to withdraw from the county free library system*  
18 *and operate the city's or the district's library or libraries with a*  
19 *private contractor that will employ library staff to achieve cost*  
20 *savings, all of the following requirements shall apply:*

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

28 *(2) The board of trustees, common council, or other legislative*  
29 *body of a city or the board of trustees of a library district shall*  
30 *clearly demonstrate that the contract will result in actual overall*  
31 *cost savings to the city or library district, provided that, in*  
32 *comparing costs, all of the following occur:*

33 *(A) The city or library district's additional cost of providing*  
34 *the same services as proposed by the contract shall be included.*  
35 *These additional costs shall include the salaries and benefits of*  
36 *additional staff that would be needed and the cost of additional*  
37 *space, equipment, and materials needed to perform the necessary*  
38 *functions of the library.*

39 *(B) The city or library district's indirect overhead costs shall*  
40 *not be included unless those costs can be attributed solely to the*

1 *function in question and would not exist if that function was not*  
2 *performed by the city or library district. For purposes of this*  
3 *subparagraph, “indirect overhead costs” means the pro rata share*  
4 *of existing administrative salaries and benefits, rent, equipment*  
5 *costs, utilities, and materials.*

6 *(C) The cost of a contractor providing a service for any*  
7 *continuing city or library district costs that would be directly*  
8 *associated with the contracted function shall be included.*  
9 *Continuing city or library district costs shall include, but not be*  
10 *limited to, costs for inspection, supervision, and monitoring.*

11 *(3) The contract shall not be approved solely on the basis that*  
12 *savings will result from lower contractor pay rates or benefits.*  
13 *Contracts shall be eligible for approval if the contractor’s wages*  
14 *are at the industry’s level and do not undercut city or library*  
15 *district pay rates.*

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

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

29 *(6) The amount of the overall cost savings of the contract shall*  
30 *clearly justify the scope and duration of the contract.*

31 *(7) The contract shall be awarded through a publicized,*  
32 *competitive bidding process.*

33 *(8) The contract shall include specific provisions pertaining to*  
34 *the qualifications of the staff that will perform the work under the*  
35 *contract, as well as assurances that the contractor’s hiring*  
36 *practices meet applicable nondiscrimination standards.*

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

39 *(10) The contract shall be with a firm. For purposes of this*  
40 *paragraph, a “firm” means a corporation, limited liability*

1 company, partnership, nonprofit organization, or sole  
2 proprietorship.

3 (11) The contract shall provide that it may be terminated at any  
4 time by the city or library district without penalty if notice is  
5 provided within 30 days of termination.

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

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

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

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

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

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

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

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

33 (C) The contract shall include provisions for an audit by the  
34 city or library district, or an independent auditor approved by the  
35 city or library district, to determine whether and to what extent  
36 the anticipated cost savings have actually been realized. The city  
37 or library district shall not renew or extend the contract prior to  
38 receiving and considering the audit report.

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

4     **SEC. 3.** *Section 19116 of the Education Code is amended to*  
5 *read:*

6     19116. (a) (1) Sections 19104 and 19105 are not applicable  
7 to the withdrawal of a city or library district from the county free  
8 library system in Los Angeles County or Riverside County. The  
9 legislative body of ~~any~~ a city or the board of trustees of ~~any~~ a  
10 library district, whose jurisdiction is within the County of Los  
11 Angeles or the County of Riverside, may notify the board of  
12 supervisors for Los Angeles County or Riverside County, as  
13 appropriate, that the city or library district no longer desires to be  
14 a part of the county free library system. The notice shall state  
15 whether the city or library district intends to acquire property  
16 pursuant to subdivision (c). The board of supervisors shall transmit  
17 a copy of the notice to the Los Angeles County Assessor or  
18 Riverside County Assessor, as appropriate, the Los Angeles County  
19 Auditor or Riverside County Auditor, as appropriate, and the State  
20 Board of Equalization.

21     (2) *If the city's legislative body or the library district's board*  
22 *of trustees intends to withdraw from the county free library system*  
23 *and operate the city's or the district's library or libraries with a*  
24 *private contractor that will employ library staff to achieve cost*  
25 *savings, the requirements of Section 19104.5 shall also apply.*

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

1 year prior to the base year and that were derived from property  
2 situated within the boundaries of the withdrawing entity shall be  
3 allocated to and used to maintain library services by the  
4 withdrawing entity in the base year and, adjusted forward, in each  
5 fiscal year thereafter at the same time allocations are made pursuant  
6 to Article 2 (commencing with Section 96) of Chapter 6 of Part  
7 0.5 of Division 1 of the Revenue and Taxation Code. This  
8 subdivision shall not apply to property tax revenues that have been  
9 pledged to repay bonded indebtedness of the county free library  
10 *system*.

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

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

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

36 (B) The price paid to the withdrawing entity by the county for  
37 the facility, if the county bought the facility from the withdrawing  
38 entity. However, if the county constructed capital improvements  
39 to the facility after it was bought from the withdrawing entity, the  
40 county's total out-of-pocket costs for the capital improvement

1 excluding any costs for routine repairs, restoration or maintenance,  
2 shall be added to the price.

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

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

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

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

22 (d) If a facility transferred pursuant to subdivision (c) serves  
23 residents of surrounding jurisdictions, the board of supervisors  
24 governing the county free library system may require, as a  
25 condition of transferring the facility, that the library services  
26 provided by the withdrawing entity to its residents also be available  
27 on the same basis to the residents of the surrounding jurisdictions.  
28 However, if the withdrawing entity contributes to the provision of  
29 library services from other city funds, or through taxes,  
30 assessments, or fees of its residents, the withdrawing entity may  
31 provide additional services to its residents. If the requirement to  
32 provide regional services is imposed and, unless otherwise agreed  
33 in writing by the county and the withdrawing entity by July 1 of  
34 the base year, an amount of property tax revenues equal to the  
35 property tax revenues derived from property situated in the  
36 surrounding jurisdictions which were, in the fiscal year prior to  
37 the base year, allocated to the county free library system pursuant  
38 to Article 2 (commencing with Section 96) of Chapter 6 of Part  
39 0.5 of Division 1 of the Revenue and Taxation Code 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 other allocations are made  
3 pursuant to Article 2 (commencing with Section 96) of Chapter 6  
4 of Part 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. If a surrounding jurisdiction  
7 subsequently provides notice of its intent to withdraw from the  
8 county free library system pursuant to subdivision (a), on the date  
9 the surrounding jurisdiction ceases to participate in the benefits of  
10 the county free library system pursuant to subdivision (b), the  
11 withdrawing entity shall no longer be required to make library  
12 services available to the residents of the surrounding jurisdiction  
13 and property tax revenues derived from property situated in the  
14 surrounding jurisdiction shall no longer be allocated to the  
15 withdrawing entity pursuant to this subdivision.

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

18 (1) "Base year" means the fiscal year commencing on the July  
19 1 following the December 2 following the date of the notice given  
20 pursuant to subdivision (a) of this section.

21 (2) "Fair market value" means:

22 (A) Any value agreed upon by the withdrawing entity and the  
23 county.

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

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

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

38 (E) The withdrawing entity shall reimburse the county for any  
39 appraisal costs the county incurs in determining the fair market  
40 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 ~~which tax rate areas~~ *that* are  
 4 wholly or partially within the withdrawing entity’s sphere of  
 5 influence, ~~which cities, libraries, and tax rate areas~~ *that* are within  
 6 the county free library system, and *that* have no facility within  
 7 their territorial boundaries providing library services at the time  
 8 the withdrawing entity provides notice pursuant to subdivision (a).

9 SECTION 1. Section 19106 of the Education Code is amended  
 10 to read:

11 19106. (a) ~~Before any board of trustees, common council, or~~  
 12 ~~other legislative body of any city, or the board of trustees of any~~  
 13 ~~library district, gives notice that the city or library district desires~~  
 14 ~~to become a part of the county free library system, or gives notice~~  
 15 ~~of withdrawal from the system, the board of trustees, common~~  
 16 ~~council, or other legislative body of the city or the board of trustees~~  
 17 ~~of the library district shall publish a notice of the contemplated~~  
 18 ~~action in all of the following manners:~~

19 (1) ~~At least once a week for four successive weeks in at least~~  
 20 ~~one newspaper of general circulation within the jurisdiction of the~~  
 21 ~~city or library district.~~

22 (2) ~~At the entrance of each library in the city or library district~~  
 23 ~~for at least 30 days prior to providing notice to the county board~~  
 24 ~~of supervisors.~~

25 (3) ~~At the entrance of the city hall or the library district~~  
 26 ~~headquarters for at least 30 days prior to providing notice to the~~  
 27 ~~county board of supervisors.~~

28 (b) ~~The notice of the contemplated action shall include the date,~~  
 29 ~~time, and place of the public hearing at which the contemplated~~  
 30 ~~action will be discussed, the identity of the hearing body or officer,~~  
 31 ~~and a general explanation of the action to be contemplated.~~

32 (c) ~~In addition to the notice required by this section, the board~~  
 33 ~~of trustees, common council, or other legislative body of the city~~  
 34 ~~or the board of trustees of the library district may give notice of~~  
 35 ~~the public hearing at which the contemplated action will be~~  
 36 ~~discussed in any other manner it deems necessary or desirable.~~

37 SEC. 2. Section 19106.2 is added to the Education Code, to  
 38 read:

39 19106.2. (a) The notice required pursuant to Section 19106  
 40 shall be mailed or delivered at least 10 days prior to the public

1 ~~hearing to any person who has filed a written request for notice~~  
2 ~~with either the clerk of the governing body of the city or library~~  
3 ~~district, or with any other person designated by the governing body~~  
4 ~~to receive these requests. A city or library district may require each~~  
5 ~~request for notice to be annually renewed.~~

6 ~~(b) A city or library district may charge a fee that is reasonably~~  
7 ~~related to the costs of providing notice by mail or delivery pursuant~~  
8 ~~to subdivision (a).~~

9 ~~SEC. 3. Section 19106.5 is added to the Education Code, to~~  
10 ~~read:~~

11 ~~19106.5. If the need arises, a public hearing conducted pursuant~~  
12 ~~to Section 19106 may be continued for multiple days or time~~  
13 ~~periods and the city or library district shall not be required to~~  
14 ~~provide new notice for each additional day or time period that the~~  
15 ~~hearing is continued.~~

16 ~~SEC. 4. Section 19106.8 is added to the Education Code, to~~  
17 ~~read:~~

18 ~~19106.8. Failure to receive notice pursuant to Section 19106~~  
19 ~~or 19106.2 shall not constitute grounds to invalidate the actions~~  
20 ~~of a city or library district for which notice was not provided.~~