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AMENDED IN SENATE AUGUST 29, 2011
AMENDED IN SENATE AUGUST 18, 2011
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CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

ASSEMBLY BILL

No. 438

Introduced by Assembly Member Williams
(Coauthor: Assembly Member Fuentes)
(Coauthors: Senators Hancock and Wolk)

February 14, 2011

An act to amend Sections 19104 and 19116 of, and to add and repeal Section 19104.5 of, 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 1 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, until January 1, 2019, 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 for the duration of the entire contract, as specified, prohibiting the contract from causing existing city or library district employees to incur a loss of employment or specified benefits or an involuntary transfer, 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, *and would prohibit its provisions from applying to contracts between a city or library district and a nonprofit organization if specified requirements are met.*

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

1 be a part of the county free library system. The notice shall be
2 accompanied by a statement complying with the requirements of
3 Chapter 8 (commencing with Section 54900) of Part 1 of Division
4 2 of Title 5 of the Government Code. The clerk of the board of
5 supervisors shall file the statement with the county assessor and
6 the State Board of Equalization. Thereafter the city or library
7 district shall cease to participate in the benefits of the county free
8 library system, and the property situated in the city or library
9 district shall not be liable for taxes for county free library purposes.

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

20 SEC. 2. Section 19104.5 is added to the Education Code, to
21 read:

22 19104.5. (a) If the board of trustees, common council, or other
23 legislative body of a city or the board of trustees of a library district
24 intends to withdraw from the county free library system and operate
25 the city's or the district's library or libraries with a private
26 contractor that will employ library staff to achieve cost savings,
27 all of the following requirements shall apply:

28 (1) At least once a week for four consecutive weeks prior to
29 taking any action, the board of trustees, common council, or other
30 legislative body of the city or the board of trustees of the library
31 district shall publish, in a newspaper designated by it and circulated
32 throughout the city or library district, notice of the contemplated
33 action, giving the date and place of the meeting at which the
34 contemplated action is proposed to be taken.

35 (2) The board of trustees, common council, or other legislative
36 body of a city or the board of trustees of a library district shall
37 clearly demonstrate that the contract will result in actual overall
38 cost savings to the city or library district for the duration of the
39 entire contract as compared with the city's or library district's

1 actual costs of providing the same services, provided that, in
2 comparing costs, all of the following occur:

3 (A) The city’s or library district’s additional cost of providing
4 the same services as proposed by the contract shall be included.
5 These additional costs shall include the salaries and benefits of
6 additional staff that would be needed and the cost of additional
7 space, equipment, and materials needed to perform the necessary
8 functions of the library.

9 (B) The city’s or library district’s indirect overhead costs shall
10 not be included unless those costs can be attributed solely to the
11 function in question and would not exist if that function was not
12 performed by the city or library district. For purposes of this
13 subparagraph, “indirect overhead costs” means the pro rata share
14 of existing administrative salaries and benefits, rent, equipment
15 costs, utilities, and materials.

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

21 (3) The contract shall not be approved solely on the basis that
22 savings will result from lower contractor pay rates or benefits.
23 Contracts shall be eligible for approval if the contractor’s wages
24 are at the industry’s level and do not undercut city or library district
25 pay rates.

26 (4) The contract shall not cause an existing city or library district
27 employee to incur a loss of his or her employment or employment
28 seniority, a reduction in wages, benefits, or hours, or an involuntary
29 transfer to a new location requiring a change in residence.

30 (5) The contract shall be awarded through a publicized,
31 competitive bidding process.

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

36 ~~(7) The contract shall be with a firm. For purposes of this~~
37 ~~paragraph, a “firm” means a corporation, limited liability company,~~
38 ~~partnership, nonprofit organization, or sole proprietorship.~~

39 (8)

1 (7) The contract shall provide that it may be terminated at any
2 time by the city or library district without penalty if there is a
3 material breach of the contract and notice is provided within 30
4 days of termination.

5 ~~(9)~~

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

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

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

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

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

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

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

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

36 ~~(10)~~

37 (9) The term of the contract shall not be more than five years
38 from the date on which the board of trustees, common council, or
39 other legislative body of a city or the board of trustees of a library
40 district approves the contract.

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

4 (c) *This section shall not apply to contracts between a city or*
5 *library district and a nonprofit organization if both of the following*
6 *requirements are met:*

7 (1) *The nonprofit organization shall not be a parent or*
8 *subsidiary of a for-profit entity.*

9 (2) *The contract shall prohibit the nonprofit organization from*
10 *subcontracting the obligation to operate the library or libraries*
11 *and to employ and supervise library staff.*

12 (e)

13 (d) This section shall remain in effect only until January 1, 2019,
14 and as of that date is repealed, unless a later enacted statute, that
15 is enacted before January 1, 2019, deletes or extends that date.

16 SEC. 3. Section 19116 of the Education Code is amended to
17 read:

18 19116. (a) (1) Sections 19104 and 19105 are not applicable
19 to the withdrawal of a city or library district from the county free
20 library system in Los Angeles County or Riverside County. The
21 legislative body of a city or the board of trustees of a library
22 district, whose jurisdiction is within the County of Los Angeles
23 or the County of Riverside, may notify the board of supervisors
24 for Los Angeles County or Riverside County, as appropriate, that
25 the city or library district no longer desires to be a part of the
26 county free library system. The notice shall state whether the city
27 or library district intends to acquire property pursuant to
28 subdivision (c). The board of supervisors shall transmit a copy of
29 the notice to the Los Angeles County Assessor or Riverside County
30 Assessor, as appropriate, the Los Angeles County Auditor or
31 Riverside County Auditor, as appropriate, and the State Board of
32 Equalization.

33 (2) If the city’s legislative body or the library district’s board
34 of trustees intends to withdraw from the county free library system
35 and operate the city’s or the district’s library or libraries with a
36 private contractor that will employ library staff to achieve cost
37 savings, the requirements of Section 19104.5 shall also apply,
38 unless the library or libraries are funded only by the proceeds of
39 a special tax imposed by the city or library district pursuant to

1 Article 3.5 (commencing with Section 50075) of Chapter 1 of Part
2 1 of Division 1 of Title 5 of the Government Code.

3 (b) When a city or library district files a notice pursuant to
4 subdivision (a), it shall remain a member of the county free library
5 system until July 1 of the base year or the date on which property
6 is transferred pursuant to subdivision (c), whichever date is later.
7 Upon ceasing to be a member of the county free library system,
8 the city or library district shall not participate in any benefits of
9 the county free library system, and shall assume the responsibility
10 for the provision of library services within its jurisdiction. Unless
11 otherwise agreed by July 1 of the base year in writing by the Board
12 of Supervisors of Los Angeles County or the Board of Supervisors
13 of Riverside County, as appropriate, and the withdrawing city or
14 library district, an amount of property tax revenue equal to the
15 property tax revenues allocated to the county free library pursuant
16 to Article 2 (commencing with Section 96) of Chapter 6 of Part
17 0.5 of Division 1 of the Revenue and Taxation Code in the fiscal
18 year prior to the base year and that were derived from property
19 situated within the boundaries of the withdrawing entity shall be
20 allocated to and used to maintain library services by the
21 withdrawing entity in the base year and, adjusted forward, in each
22 fiscal year thereafter at the same time allocations are made pursuant
23 to Article 2 (commencing with Section 96) of Chapter 6 of Part
24 0.5 of Division 1 of the Revenue and Taxation Code. This
25 subdivision shall not apply to property tax revenues that have been
26 pledged to repay bonded indebtedness of the county free library
27 system.

28 (c) If there are one or more county library facilities within the
29 territorial boundaries of the withdrawing entity at the time the
30 withdrawing entity provides notice pursuant to subdivision (a),
31 the withdrawing entity shall have the right to acquire any or all of
32 those facilities from the county and the county shall, no later than
33 July 1 of the base year, transfer to the withdrawing entity each
34 facility to be acquired and the personal property therein related to
35 the provision of library services. If the facility or personal property
36 was purchased with bond proceeds or other forms of indebtedness,
37 acquisition shall only take place if the withdrawing entity assumes
38 any remaining indebtedness and in no way impairs the repayment
39 thereof. If the withdrawing entity opts not to acquire any facilities
40 or personal property, the county at its discretion may dispose of

1 the facilities or personal property or convert the use of those
 2 facilities or personal property, including transferring collections
 3 and other personal property to other sites and converting facilities
 4 to other purposes. If the withdrawing entity opts to acquire any
 5 facilities or personal property, the acquisition prices shall be as
 6 follows unless otherwise provided for by statute or contract:

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

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

13 (B) The price paid to the withdrawing entity by the county for
 14 the facility, if the county bought the facility from the withdrawing
 15 entity. However, if the county constructed capital improvements
 16 to the facility after it was bought from the withdrawing entity, the
 17 county's total out-of-pocket costs for the capital improvement
 18 excluding any costs for routine repairs, restoration, or maintenance,
 19 shall be added to the price.

20 (C) The fair market value of the facility. However, if any portion
 21 of the facility was donated to the county by the withdrawing entity
 22 or if any moneys were donated by the withdrawing entity toward
 23 the county's construction or acquisition of the facility or any
 24 portion thereof, the value of the donation shall be subtracted from
 25 the fair market value.

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

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

32 (B) The fair market value of the personal property. However,
 33 on or before the March 1 preceding the July 1 of the base year, the
 34 county librarian may designate collections of resource books and
 35 materials that are unique in, and integral to, the county free library
 36 system to be special collections. The special collections shall be
 37 acquired by the withdrawing entity only upon mutually agreeable
 38 terms and conditions.

39 (d) If a facility transferred pursuant to subdivision (c) serves
 40 residents of surrounding jurisdictions, the board of supervisors

1 governing the county free library system may require, as a
2 condition of transferring the facility, that the library services
3 provided by the withdrawing entity to its residents also be available
4 on the same basis to the residents of the surrounding jurisdictions.
5 However, if the withdrawing entity contributes to the provision of
6 library services from other city funds, or through taxes,
7 assessments, or fees of its residents, the withdrawing entity may
8 provide additional services to its residents. If the requirement to
9 provide regional services is imposed and, unless otherwise agreed
10 in writing by the county and the withdrawing entity by July 1 of
11 the base year, an amount of property tax revenues equal to the
12 property tax revenues derived from property situated in the
13 surrounding jurisdictions that were, in the fiscal year before the
14 base year, allocated to the county free library system pursuant to
15 Article 2 (commencing with Section 96) of Chapter 6 of Part 0.5
16 of Division 1 of the Revenue and Taxation Code shall be allocated
17 to and used to maintain library services by the withdrawing entity
18 in the base year and, adjusted forward, in each fiscal year thereafter
19 at the same time other allocations are made pursuant to Article 2
20 (commencing with Section 96) of Chapter 6 of Part 0.5 of Division
21 1 of the Revenue and Taxation Code. This subdivision shall not
22 apply to property tax revenues that have been pledged to repay
23 bonded indebtedness. If a surrounding jurisdiction subsequently
24 provides notice of its intent to withdraw from the county free
25 library system pursuant to subdivision (a), on the date the
26 surrounding jurisdiction ceases to participate in the benefits of the
27 county free library system pursuant to subdivision (b), the
28 withdrawing entity shall no longer be required to make library
29 services available to the residents of the surrounding jurisdiction
30 and property tax revenues derived from property situated in the
31 surrounding jurisdiction shall no longer be allocated to the
32 withdrawing entity pursuant to this subdivision.

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

35 (1) "Base year" means the fiscal year commencing on the July
36 1 following the December 2 following the date of the notice given
37 pursuant to subdivision (a) of this section.

38 (2) "Fair market value" means:

39 (A) Any value agreed upon by the withdrawing entity and the
40 county.

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

4 (C) If no agreement as to the appointment of an appraiser is
5 reached pursuant to subparagraph (B) by the April 1 preceding the
6 July 1 of the base year, the value assigned by an appraiser agreed
7 upon between the withdrawing entity’s appraiser and the county’s
8 appraiser.

9 (D) If no agreement as to the appointment of an appraiser is
10 reached pursuant to subparagraph (C) by the May 1 preceding the
11 July 1 of the base year, the value assigned by a state-certified
12 appraiser designated by the withdrawing entity. The designated
13 appraiser shall provide the appraisal in writing to the county no
14 later than the June 1 preceding the July 1 of the base year.

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

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