

# Legislative Analysis



## LIBRARY FREEDOM TO READ ACTS

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### House Bills 6034 and 6035 as introduced

Sponsor: Rep. Veronica A. Paiz

Committee: Government Operations

Complete to 12-3-24

Analysis available at  
<http://www.legislature.mi.gov>

## SUMMARY:

House Bills 6034 and 6035 would each create a new act, respectively called the Public Library Freedom to Read Act and the District Library Freedom to Read Act. The bills would provide standards and processes for the selection of materials to be included in, or withdrawn from, a public or district library's collection. The bills are identical, except that HB 6034 would apply to *public libraries* and HB 6035 would apply to *district libraries*. The bills are described together below, where the term *library* is used to include both public and district libraries.

**Public library** (HB 6034) would mean a library, the whole interests of which belong to the general public, lawfully established for free public purposes by any one or more counties, cities, townships, villages, school districts or other local governments, or by a general or local act. Public library would not include a district library or a special library, such as a professional or technical library or a school library.

**District library** (HB 6035) would mean a district library established under the District Library Establishment Act, which allows two or more cities, villages, school districts, townships, or counties to establish a district library under conditions and parameters provided in that act.<sup>1</sup>

### Responsibility for selection

Under the bills, except as otherwise provided by law, the director would have the final responsibility for the *selection* of *materials* for inclusion or *withdrawal* in a library's collection. If the library has no director, the final responsibility would belong to the chief executive employee working at the library. The director or chief executive employee could designate another individual to act on their behalf to assist with selection or withdrawal.

**Selection** would mean the process by which a library determines which items to include in the library's collection, through purchase, donation, or other means.

**Material** would mean an individual book, magazine, DVD, CD-ROM, or other audio-visual material that is a tangible item or an electronically available item in the library's collection. Material would include a library program. Material would not include any of the following:

- A website available through the library's computers or internet connection.
- An item available through interlibrary loan.
- A program not sponsored or operated by the library.
- A label placed on materials.

<sup>1</sup> <https://www.legislature.mi.gov/Home/RenderDoc?objectName=mcl-Act-24-of-1989>

- A library's display or location of its materials.
- An item available through databases or electronic services for which the library does not have direct control or authority for selection.

***Withdrawal*** would mean the routine or periodic removal of materials from a library's collection for reasons stated in the library's policy.

#### Required library policy

No later than 90 days after the bill takes effect, a library would have to have a policy that identifies at least all of the following:

- Standards for selection of material for the library's collection.
- Standards for the withdrawal of material from the library's collection.
- A process for a ***request for reconsideration*** of the inclusion of material in the library's collection.
- Conditions that must be met before the library will review a request for reconsideration. These could include any of the following:
  - The reason for the request for reconsideration. (A library could not consider a reason that does not comply with the bills.)
  - That the individual making the request for reconsideration certifies that they have read the entire material before filing the request. (If the request involves a program, they would have to certify that they have attended the program or read the program description, and it involves audio or video material, they would have to certify that they have listened to or viewed the entire material.)
  - A request for reconsideration may be made only by a resident of the library's ***legal service area*** or ***contracted service area***.
  - If a request for reconsideration has been determined by the library, the library shall not consider a request for reconsideration of the same material within 365 days after that determination.
  - That, under ***unusual circumstances***, the library may extend the period during which the library must respond to the request for reconsideration.
  - Any other lawful requirement.

***Request for reconsideration*** would mean a request to remove material from a library's collection other than through the withdrawal process.

***Legal service area*** would mean either of the following, as applicable:

- For a district library (HB 6035), the district library's district.
- For a public library (HB 6034), any of the following:
  - The city, township, or village in which a public library is established under 1877 PA 164 by charter or ordinance.<sup>2</sup>
  - The county in which a county library is established under 1917 PA 138.<sup>3</sup>
  - The jurisdiction in which a public library has been established by a local or special act.

<sup>2</sup> <https://www.legislature.mi.gov/Home/RenderDoc?objectName=mcl-Act-164-of-1877>

<sup>3</sup> <https://www.legislature.mi.gov/Home/RenderDoc?objectName=mcl-Act-138-of-1917>

***Contracted service area*** would mean a jurisdiction for which a library receives state aid under the State Aid to Public Libraries Act or 1964 PA 59 pursuant to a contract.<sup>4</sup>

***Unusual circumstances*** would mean one or more of the following, but only to the extent necessary for the proper processing of a request for reconsideration:

- The need to examine or review a voluminous number of separate and distinct requests for reconsideration that were submitted at the same time or within the same 30-day period.
- The need to provide sufficient time for an individual responsible for reviewing or deciding the request for reconsideration to review the material.
- The need to schedule a library board meeting to address a request for reconsideration.

#### Requests for reconsideration

The following would apply to a request for reconsideration:

- A request for reconsideration could be made to a library only for material owned or controlled by that library.
- A request for reconsideration could not be made based on the religion, race, color, national origin, age, sex, sexual orientation, gender identity or expression, height, weight, familial status, or marital status of the author or because the subject matter, content, or viewpoint of the material involves religion, race, color, national origin, age, sex, sexual orientation, gender identity or expression, height, weight, familial status, or marital status. The director or chief executive employee would have discretion to determine if the reasons stated in a request for reconsideration comply with these provisions.
- A library could not grant a request for reconsideration based on the subject matter, content, or viewpoint of material, unless the material has been adjudicated to be obscene or otherwise unprotected by the First Amendment of the Constitution of the United States or section 5 of Article I of the state constitution, as determined by a court of competent jurisdiction over the community the library serves.

#### Civil actions

The attorney general could, on behalf of the Library of Michigan, commence a civil action seeking a mandamus or other action to compel a library to adopt a policy in compliance with the bills.

The attorney general or a resident of the library's legal service area or contracted service area could commence a civil action for any of the following:

- A temporary or permanent injunction to prevent the library from unlawful removal of material in violation of the bills.
- A mandamus or other action to compel the library to return material to the collection that is removed in violation of the bills.

Neither bill can take effect unless both bills are enacted.

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<sup>4</sup> <https://www.legislature.mi.gov/Home/RenderDoc?objectName=mcl-Act-89-of-1977>  
and <https://www.legislature.mi.gov/Home/RenderDoc?objectName=mcl-Act-59-of-1964>

## **FISCAL IMPACT:**

House Bills 6034 and 6035 may create costs for the state and for certain public and district libraries.

The bills give the attorney general the authority to commence civil action to compel libraries to meet the requirement for a policy described within the bills. The attorney general and residents of the library's legal service area or contracted service area are also given the authority to commence civil action to prevent the unlawful removal of material or to compel a library to return material to the collection. Public and district libraries could incur legal expenses as a result. Costs incurred by the attorney general from pursuing any potential civil action under the bills would likely be supported by ongoing annual appropriations.

In addition, certain public and district libraries may incur costs to develop a policy that includes standards for material selection and withdrawal, a process for a request for reconsideration, and the conditions that must be met before reviewing a request for reconsideration. These costs would likely be absorbed using existing staff time.

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■ This analysis was prepared by nonpartisan House Fiscal Agency staff for use by House members in their deliberations and does not constitute an official statement of legislative intent.