

Date of Hearing: April 23, 2024

ASSEMBLY COMMITTEE ON JUDICIARY
Ash Kalra, Chair
AB 1825 (Muratsuchi) – As Amended April 1, 2024

As Proposed to be Amended

SUBJECT: CALIFORNIA FREEDOM TO READ ACT

KEY ISSUE: SHOULD PUBLIC LIBRARIES DEVELOP A WRITTEN POLICY ON THE SELECTION AND USE OF LIBRARY MATERIALS, AND SHOULD THE POLICY PROHIBIT EXCLUDING MATERIALS BASED ON THE TOPIC, VIEWS, OR OPINIONS EXPRESSED IN THE MATERIALS, AS SPECIFIED?

SYNOPSIS

The past two years have witnessed efforts by local groups to remove what they consider “objectionable” reading materials from public and school libraries. Although most examples come from other states, at least two California communities – Fresno and Huntington Beach – have recently seen efforts to remove material from libraries. In light of these reports, this bill would enact the California Freedom to Read Act. The Act would require the governing board of a public library (board) to develop a written policy on the selection and use of library materials. These policies, at a minimum, must establish a process for community members to challenge library materials; guide the selection and deselection of printed and electronic resources, and ensure access to those materials; and meet the broad and diverse interests of the community while respecting the autonomy of the library. In addition, the bill would prohibit the board from excluding materials from the library collection because of the views expressed or the topics addressed. The policy may not exclude material in a way that discriminates on the basis of certain protected characteristics, or because the material contains sexual content (unless the sexual content qualifies as “obscene” under First Amendment case law). Finally, the Act declares that a person’s right to use a public library shall not be abridged solely because of that person’s personal characteristics, such as age, background, or views.

This bill recently passed out of the Assembly Education Committee on a 5-1 vote. The bill is supported by the ACLU, the League of Women Voters, and several women’s and LGBTQ groups. The bill is opposed unless amended, by the California Library Association for both technical and substantive reasons, though at least some of their objections will be addressed by amendments taken in Committee. Two other groups oppose the bill unless it is amended to exclude school libraries, and proposed amendments should address this concern. The author will take several amendments in this Committee, though it is unclear whether this will remove all of the opposition. The amendments are reflected in the bill summary below and explained in the analysis.

SUMMARY: Requires public libraries to develop written policies on the selection and use of library materials and prohibits the exclusion of library materials for specified reasons. Specifically, **this bill:**

- 1) Requires the governing board of each public library, which may include a city, county, special district, or joint powers authority, and includes any library operated on a contractual

basis for a public entity, and directs the public library to adopt a written, publicly accessible collection development policy. Requires the policy, at a minimum, to establish a process for community members to challenge library materials; guide the selection and deselection of printed and electronic resources, and ensure access to those materials; and meet the broad and diverse interests of the community while respecting the autonomy of the library.

- 2) Requires the policy to prohibit the governing board of a library from excluding materials because of the origin, background, or views of those contributing to the creation of the materials, or because of the topic addressed by the materials or the views or opinions expressed in the materials.
- 3) Requires copies of the collection development policy described in 1) and 2) above to be sent to the California State Library for review by January 1, 2026.
- 4) Prohibits the governing board or body of a public library from proscribing the circulation or procurement of books or other resources in a public library because of the topic addressed by the materials or because of the views, ideas, or opinions contained in those materials. Also prohibits a public library from exercising the discretion to determine the content of library materials in a manner that discriminates against or excludes materials based on specified protected characteristics, or on the basis that the materials contain inclusive and diverse perspectives, or on the basis that the materials may include sexual content.

EXISTING LAW:

- 1) Defines a public library to mean a library, or two or more libraries, operated as a single entity by one or more public jurisdictions and which serve the general public without distinction. (Education Code Section 18015. Subsequent section numbers refer to this code unless otherwise indicated.)
- 2) Authorizes the organization of a library district, and authorizes it to establish, equip, and maintain a public library for the dissemination of knowledge of the arts, sciences, and general literature and exercise the powers as granted or necessarily implied. (Section 19400.)
- 3) The board of library trustees shall make and enforce all rules, regulations, and bylaws necessary for the administration, government, and protection of the library under its management, and all property belonging to the district. (Section 19460.)
- 4) States that every library shall be forever free to the inhabitants and nonresident taxpayers of the library district, subject always to such rules, regulations, and bylaws as may be made by the board of library trustees. States that, for violation of any rule, regulation, or bylaw, a person may be fined or excluded from the privileges of the library. (Section 19479.)
- 5) Establishes the California State Library, under the direction of the State Librarian, and lists among the responsibilities of the office to purchase and maintain materials and equipment as necessary to carry out California State Library programs and services consistent with well-established library standards. (Sections 19300-19328.)

FISCAL EFFECT: As currently in print this bill is keyed fiscal.

COMMENTS: According to the author, libraries “provide access to books that offer teachable moments for readers of all ages and expand our understanding of people with different backgrounds, ideas, and beliefs. Removing and banning books from public libraries is a dangerous step to government censorship and the erosion of our country’s commitment to freedom of expression. AB 1825, the California Freedom to Read Act, protects the fundamental right of access to diverse and inclusive books and library materials.”

Specifically, *this bill* would require the governing board of a public library (board) to develop a written policy on the selection and use of library materials. The bill would require that policies, at a minimum, establish a process for community members to challenge library materials; guide the selection and deselection of printed and electronic resources, and ensure access to those materials; and meet the broad and diverse interests of the community while respecting the autonomy of the library. In addition, the bill would prohibit the board from excluding materials from the library collection because of the views expressed or the topics addressed. A policy may not exclude material in a way that discriminates on the basis of certain protected characteristics or because the material contains sexual content (unless the sexual content qualifies as “obscene” under First Amendment case law). Finally, the Act declares that a person’s right to use a public library shall not be abridged solely because of that person’s personal characteristics, such as age, background, or views.

The First Amendment and “the right to receive information and ideas.” We often think of the First Amendment as protecting “freedom of speech” and “freedom of expression.” The government cannot enact laws or adopt policies that “infringe” or “burden” our ability to speak or write on any matter that we choose, so long as the speech or writing does not constitute an “unprotected” category of speech such as obscenity, incitements to violence, or fraud. However, the U.S. Supreme Court has also long held that there is an important and logically necessary corollary to freedom of speech and expression: “the right to receive information and ideas.” For example, in *Martin v. City of Struthers* (1943), the U.S. Supreme Court overturned the conviction of a Jehovah’s Witness who had violated a local ordinance that prohibited distributing literature door-to-door. Justice Hugo Black wrote that “freedom [of speech] embraces the right to distribute literature, and necessarily protects the right to receive it.” (319 U.S. 141.) Twenty-six years later, in *Stanley v. Georgia* (1969), Justice Thurgood Marshall, considering a law that made possession of obscene material a crime, reasoned that the state had no business telling people what books they could read and, following *City of Struthers*, held that the First Amendment includes “the right to receive information and ideas.” (494 U.S. 557.) In *Board of Education v Pico* (1982), the U.S. Supreme Court applied this principle to a local school board’s decision to remove from its library books by Richard Wright and Kurt Vonnegut, among others, because the board claimed they were “anti-American, anti-Christian, anti-Semitic, and just plain filthy.” (494 U.S. 557.) Most or all of these cases implicated both the right to free speech and the right to receive information, and the Court made it clear that they are necessarily connected. After all, freedom of speech and freedom of press do not mean very much if the intended audience cannot hear it or read it. The free “exchange” of ideas requires both a speaker and a listener.

This bill clearly implicates, and seeks to protect, “the right to receive information and ideas.” The bill’s findings and declaration make this clear, highlighting how removing and banning books from public libraries “erode our country’s commitment to freedom of expression *and the right to receive information.*” [Emphasis added.]

Attempted book bans nationwide and in California. According to the American Library Association's (ALA) Office of Intellectual Freedom, challenges to specific book titles increased by 65% between 2022 and 2023. According to ALA, pressure groups have more often targeted public libraries rather than school libraries, even though national media has tended to focus a great deal on school libraries. ALA found that the number of challenges to public libraries increased by 92% in 2023, while challenges at school libraries increased by 11%. (This divergence may also reflect that there are more school libraries than public libraries, for even though challenges at public libraries increased by 92%, public libraries accounted for only 46% of all book challenges in 2023.)

According to ALA's numbers, in California there were 52 challenges to 98 titles in public libraries and school libraries in 2023, whereas there were 32 challenges to 87 titles in 2022. Two particularly well-reported California examples occurred in Fresno and Huntington Beach. Fresno County introduced a resolution that targeted books that had "sexual content" or referenced "gender identity." The resolution did not call for the removal of books; rather, it required that such material be held in places where a person under 18 years of age could not access it without parental consent. (<https://fresnocounty.legistar.com>). The Huntington Beach resolution similarly required city libraries to prohibit anyone under 18 from accessing books with "sexual content" without parental consent. In addition, the Huntington Beach resolution called for the establishment of a "Community Parent/Guardian Review Board" that would review library materials to ensure that they met "community standards." (<https://huntingtonbeach.legistar.com>). While both resolutions speak in terms of protecting "children" from "sexual content," it is notable that they block access to anyone under 18 years of age unless they have parental consent. Certainly it is one thing to block access of a five-year old to "sexual content" without parental consent, but it is quite another to prevent a 17-year old from doing so, given that not all materials that have "sexual content" are inappropriate. It is not unreasonable to assume that the creation of a parent "review board" will only increase the number of challenges. For those who believe that our public libraries are teeming with inappropriate sexual content, an increase in challenges will no doubt be a welcome development. For those who believe that public libraries and professional librarians should have the ability to make decisions based upon professional judgement, without undue political interference, the increase in challenges will be an unwelcome development.

Public Library Concerns. The California Library Association (CLA) supports the intent of this bill, especially given that efforts to pressure public libraries to remove material undermines their members' professional autonomy. CLA supports, as a general principle, local and professional control by the library board and trained librarians, and they fear that unless the duties of a library's "governing body" are clearly defined, the bill may unintentionally place decisions in the hands of city councils, boards of supervisors, or special districts. Relatedly, the CLA would like greater clarification on whether the bill would allow the creation of citizen "review boards" of the type that have been suggested in Huntington Beach and elsewhere. Both the author's office and the CLA have engaged in extensive discussions with each other and Committee staff, and it seems likely that mutual ground can be found.

Proposed author amendments. In response to concerns raised by CLA and others, the author will take a number of amendments in this Committee. Most significant, the amendments remove a provision in the bill that would have allowed any user of a public library to bring a civil action for injunctive relief, and removes references to the American Library Association "Bill of Rights" to serve as a model guideline. The other proposed amendments are primarily clarifying in nature. Specifically, the author wishes to take following amendments in this Committee:

Amendment #1: Amend subdivision (f) and add subdivision (g) in Section 19801 as follows:

(f) Librarians *and library staff* receive extensive professional training to develop and curate collections to meet the broad and diverse interests of their communities, which include, but are not limited to, literary value and developmental appropriateness of material.

(g) This bill applies to public libraries as defined in Section 18015 of the Education Code.

Amendment #2: Amend Section 19802 as follows:

(a) (1) The governing board or body of each public library in the state, ***which may include a city, county, special district, or joint powers authority*** and includes any library operated on a contractual basis for a public entity, shall ~~establish a written policy for the selection of library materials and the use of library materials and facilities in accordance with the American Library Association's Library Bill of Rights and its interpretations. Facilities~~ ***direct the public library to adopt a written, publicly accessible collection development policy.*** The policy, at a minimum, shall do all of the following:

(A) Establish a process for community members to challenge library materials

(B) Guides the selection and deselection of printed and electronic resources and also addresses access, acquisition, processing, discarding and retention of library materials.

(C) Meets the broad and diverse interests of the community and respects both the library's autonomy and their specific community needs.

~~***(A D)***~~ Establish that the public library serves as a center for voluntary inquiry and the dissemination of information and ideas.

~~***(B E)***~~ Establish that library materials shall not be excluded from the library collection because of the origin, background, or views of those contributing to the creation of the materials, or because of the topic addressed by the materials or the views or opinions expressed in the materials.

~~***(C F)***~~ Acknowledge that library materials should be provided for the interest, information, and enlightenment of all people, and should present diverse points of view in the collection as a whole.

~~***(D G)***~~ Acknowledge the right of the public to receive access to a range of social, political, aesthetic, moral, and other ideas and experiences.

(2) Copies of the collection development policies shall be sent to the California State Library for review by January 1, 2026.

~~(2) Written policies established in accordance with and acknowledging the American Library Association's Library Bill of Rights and its interpretations shall be deemed in compliance with the requirements of paragraph (1).~~

(b) (1) The governing board or body of a public library *which may include a city, county, special district, or joint powers authority* shall not proscribe or prohibit the circulation or procurement of any book, audio, film, instructional material, or other resource in a public library because of ~~partisan or doctrinal disapproval of the ideas~~ the topic addressed by the materials or because of the views, ideas, or opinions contained in those materials.

(2) The discretion to determine the content of materials in public libraries shall not be exercised in ~~a narrowly partisan or political manner~~, a manner that discriminates against or excludes materials based on race, nationality, gender identity, ~~sexuality~~, sexual orientation, religion, disability, political affiliation, or socioeconomic status, ~~or~~ on the basis that the materials under consideration contain inclusive and diverse ~~perspectives~~. perspectives, or on the basis that the materials may include sexual content, unless that content qualifies as obscene under United States Supreme Court precedent.

(3) Any decision by a public library to remove a book shall conform to the requirements of the First Amendment to the United States Constitution and Section 2 of Article I of the California Constitution.

(4) The governing board or body of a public library *which may include a city, county, special district, or joint powers authority* shall not create policies or procedures that limit or restrict access to books and other resources offered by the public ~~library~~. library unless the policies or procedures are adopted to preserve the safety or security of the library's materials, are time, place, and manner restrictions not based on the content of materials, or are programs that provide for the effective management of the library and its resources to preserve access for all library users.

(c) A person's right to use a public library and its resources shall not be denied or abridged solely because of personal characteristics, age, background, or views.

~~(d) All people, regardless of personal characteristics, age, background, or views, possess a right to privacy and confidentiality in their use of a public library.~~

~~(e) A user of a public library at the time that the public library took an action, or is continuing to take an action, in violation of this section may commence a civil action to obtain appropriate injunctive and declaratory relief as determined by the court.~~

ARGUMENTS IN SUPPORT: ACLU Action of California observes that libraries “play a special role in the public’s civic education and the free exchange of diverse ideas and information. Over the past year, more than 3,000 books have been banned in libraries across America. These books disproportionately feature stories about LGBTQ+ communities, people of color, and historically marginalized communities. Book bans to this effect are not only discriminatory – they are a violation of people’s First Amendment right to access information.” Noting that the Fresno and Huntington Beach resolutions were concerned mostly with “sexual content,” ACLU cites leading case law supporting the proposition that “speech is not unprotected merely because it contains some alleged ‘sexual content.’ [Citations omitted.] Under the First Amendment, speech ‘cannot be suppressed solely to protect the young from ideas or images that a legislative body thinks unsuitable for them.’ *Erznoznik v. City of Jacksonville*, 422 U.S. 205, 213–14 (1975). We must protect the fundamental First Amendment right of access to diverse and inclusive information at our public libraries.”

The League of Women Voters (LWV) supports this bill because it “supports access by all persons to public library services as a major source of knowledge and information necessary for informed, active participation in a democratic society.” LWV believes “that our democratic government depends on informed and active participation at all levels of government. Libraries provide essential resources to educate the public and promote civic engagement. Furthermore, many book bans target works that relate to issues of race, gender identity and sexuality. By stripping shelves of literature related to particular communities we erase their existence, scrub out their history, deny their representation, lose the opportunity to expand everyone’s knowledge and understanding, and participate in the marginalization of large swathes of society.”

ARGUMENTS IN OPPOSITION (UNLESS AMENDED): The California Library Association (CLA) opposes this bill unless amended to address a number of issues, both technical and substantive. Two of CLA’s concerns – the private right to action and references to the ALA Bill of Rights – are addressed in the amendments to be taken in this Committee. However, the CLA has a few remaining concerns, including adding a clearer explanation of how the “governing board” of the library would operate and whether the bill would permit citizen “review panels” that oversee library choices. Such panels, CLA notes, would be “counterintuitive to the bill’s spirit.” However, CLA’s more general concern is that public libraries “should retain local control regarding selecting, removing, and accessing materials that are responsive to community needs.”

Two groups – Our Duty and Carlsbad Citizens for Community Oversight (CCCO) – oppose AB 1825, unless amended to explicitly exclude school libraries. Our Duty, in particular, argues that if the bill includes school libraries “parent groups across the state will start protesting against this piece of legislation,” and Our Duty writes that it “will encourage school boards to file suit against the state for undermining local control.” Both Our Duty and CCCO contend that the bill would prevent parents and local school districts from keeping “harmful matter out of the children’s section.” They contend that we should “let children be children and . . . keep inappropriate and sexualized material off the children’s library shelves.”

REGISTERED SUPPORT / OPPOSITION:

Support

ACLU California Action
 Beach Cities Health District
 California Faculty Association
 California Federation of Teachers
 California Legislative LGBTQ Caucus
 California Women's Law Center
 Diversify Our Narrative
 El Camino College Gender Sexuality Alliance
 El Camino College Pride Center
 Equality California
 Generation Up
 League of Women Voters of California
 PFLAG Manhattan Beach/South Bay

Opposition unless amended

California Library Association

Carlsbad
Our Duty

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