



THE STATE EDUCATION DEPARTMENT / THE UNIVERSITY OF THE STATE OF NEW YORK
/ ALBANY, NY 12234

TO: The Honorable the Members of the Board of Regents
FROM: Jeffrey W. Cannell 
SUBJECT: Emergency Amendment of Regents Rule §3.27 Relating
to Museum Collections Management Policies
DATE: June 9, 2009
STRATEGIC GOAL: 2,4
AUTHORIZATION(S):

Summary

Issue for Decision (Consent Agenda)

Should the Regents adopt as a fourth emergency action, effective for 60 days, the amendment of §3.27 of the Rules of the Board of Regents, relating to museum collections management policies?

Reason for Consideration

Implementation of Regents policy.

Proposed Handling

The proposed amendment will be presented to the Cultural Education Committee for approval and to the Full Board for emergency action at the June Regents meeting.

Procedural History

The proposed amendment was discussed by the Committee and adopted by the Full Board as an emergency action at the December Regents meeting, effective December 19, 2008, and was readopted at the March and April Regents meetings as emergency actions.

State Education Department staff have worked with the Legislature and with museum constituents to develop revised standards for museum deaccessioning that have now been introduced as legislation applicable to all museums. Now that legislation has been introduced, we propose to revise the regulation to conform to the legislation.

Before the revised rule can be permanently adopted we must publish a Notice of Revised Rule Making in the State Register and provide a 30-day public comment period. The earliest the proposed amendment can be permanently adopted, after publication and expiration of the public comment period, is at the September 14-15, 2009 Regents meeting. However, the April emergency rule is only effective for 60 days and will expire on July 16, 2009. To avoid the adverse effects of a lapse in the emergency rule, a fourth emergency action is necessary at the June Regents meeting to readopt the rule, effective July 17, 2009.

Background Information

The proposed amendment has been recommended by the State Education Department and State Museum management to protect collections held by museums and historical societies.

Regents Rule §3.27 provides standards for chartered museums and historical societies. Sections 3.27 and 3.30 were first promulgated effective March 1971, and the Regents added a collections management policy requirement effective July 1998. The March 2006 amendment greatly expanded the standards by providing increased oversight for collections and resources held in the public trust.

In the current financial downturn, museums face deficits that threaten the ownership or integrity of their collections. We believe current Regents Rules on collections need to be more explicit on acceptable criteria for deaccessioning collections. In addition, we seek to remove the option to use collections proceeds for improving a historic structure since such use of funds has been criticized and widely debated. Even if a museum fails, we want to keep collections in the public trust and not lose them to debt or insolvency.

The emergency provisions would apply to chartered museums and historical societies authorized to own and hold collections under Rule §3.27, and would:

- Enumerate the specific criteria under which an institution may deaccession an item or material in its collection.
- Remove the option allowing an institution to designate a structure as a collections item; but keep intact any such designation made by vote of a board of trustees prior to December 19, 2008.
- Specify that no proceeds from deaccessioning may be used for capital expenses, except to preserve, protect or care for an historic building previously designated as part of the institution's collection, as above.

In November and December 2008 we informed constituents of the original emergency amendment through a mailing with cover memo, announcements on web sites, and copies sent to listservs and electronic mailing lists. We received about 30 written comments which we provided to the Regents prior to the December vote.

The proposed amendment is being presented for adoption as an emergency action. A Statement of Facts and Circumstances Which Necessitate Emergency Action is attached. Supporting materials are available upon request from the Secretary to the Board of Regents.

Recommendation

It is recommended that the Board of Regents take the following action:

VOTED: That paragraph (7) of subdivision (a) and paragraphs (6) and (7) of subdivision (c) of section 3.27 of the Rules of the Board of Regents be amended, as submitted, effective July 17, 2009, as an emergency action to expire and be deemed repealed September 14, 2009, upon a finding by the Board of Regents that such action is necessary for the preservation of the general welfare in order to protect the public's interest in collections held by a museum or historical society by enumerating the specific criteria under which an institution may deaccession an item or material in its collection, remove the option allowing an institution to designate a structure as a collections item but keep intact any such designation made by vote of a board of trustees prior to December 19, 2008, and specify that no proceeds from deaccessioning may be used for capital expenses, except to preserve, protect or care for an historic building previously designated as part of the institution's collection, as above.

Timetable for Implementation

The emergency rule adopted at the December Regents meeting was effective for 90 days, beginning on December 19, 2008, and expired on March 18, 2009. The March emergency rule became effective on March 19, 2009 and expired on May 17, 2009. The April emergency rule became effective on May 18, 2009 and will expire on July 16, 2009. If adopted by the Board of Regents at the June meeting, the emergency rule will become effective on July 17, 2009, and would remain in effect for 60 days, expiring on September 14, 2009. Now that legislation has been introduced, we propose to revise the regulation to conform to the legislation. The revised rule will be presented for adoption as a permanent rule at a subsequent Regents meeting, after publication in the State Register and expiration of the 30-day public comment period.

PROPOSED AMENDMENT OF SECTION 3.27 OF THE RULES OF THE BOARD OF REGENTS PURSUANT TO EDUCATION LAW SECTIONS 101, 207, 215, 216, 217 AND 233-aa AND CHAPTER 220 OF THE LAWS OF 2008, RELATING TO MUSEUM COLLECTIONS MANAGEMENT

STATEMENT OF FACTS AND CIRCUMSTANCES WHICH NECESSITATE EMERGENCY ACTION

The proposed amendment is necessary to implement Regents policy to protect the public's interest in collections held by chartered museums and historical societies.

Specifically, the proposed amendment clarifies restrictions on the deaccessioning of items and materials in an institution's collections, consistent with generally accepted professional and ethical standards within the museum and historical society communities. An institution may deaccession an item or material in its collection only where one or more of the following criteria have been met:

- (1) the item or material is not relevant to the mission of the institution;
- (2) the item or material has failed to retain its identity, or has been lost or stolen and has not been recovered;
- (3) the item or material duplicates other items or material in the collection of the institution and is not necessary for research or educational purposes; and/or
- (4) the institution is unable to conserve the item or material in a responsible manner.

In addition to the existing prohibition against using proceeds from a deaccessioning for operating expenses, the proposed amendment would extend such prohibition to also include the use of such proceeds for the payment of outstanding debt and for the payment of capital expenses other than those incurred to preserve, protect or care for an historic building which has been designated part of its collections.

The proposed amendment also removes the option in section 3.27 allowing an institution to designate a structure as a collections item; but keeps intact any such designation made by vote of a board of trustees prior to December 19, 2008. If such designation was made, an institution may use proceeds from deaccessioning for capital expenses, to preserve, protect or care for an historic building designated as part of the institution's collection.

In the current financial downturn, collections held by museums and historical societies could be threatened by inappropriate deaccessioning by sale, disposal or transfer. Currently, some 37 institutions in New York in 2006 reported deficits of \$100,000 or more. The Department is concerned that, in the absence of an express prohibition in Regents rule section 3.27, museums and historical societies in financial distress will deaccession items or materials for purposes of paying their outstanding debt. Consistent with generally accepted professional and ethical standards within the museum and historical society communities, the proposed amendment would expressly prohibit proceeds from deaccessioning from being used for the payment of outstanding debt or capital expenses. The proposed amendment would also restrict when an institution may deaccession its collections to the instances listed in (1) through (4) above. This specific language was added in response to museums which sought clarity on what constitutes proper and acceptable grounds for deaccessioning.

Emergency action to adopt the proposed amendment is necessary for the preservation of the general welfare in order to protect the public's interest in collections held by a chartered museum or historical society by immediately clarifying the limited circumstances under which an item or material in a collection may be deaccessioned, in order to deter institutions in financial distress in the current fiscal crisis from selling or otherwise disposing of collection items and materials, in a manner inconsistent with

accepted museological standards and State law, such as using the proceeds from the deaccessioning for payment of outstanding debt or operating expenses, and to prospectively limit the ability of museums and historical societies to designate a historic building as a collection item, so that institutions in financial distress will not make such designation for the purpose of justifying the sale of other items in their collections in order to pay capital expenses associated with the building.

The proposed amendment was adopted as an emergency rule at the December 2008 Regents meeting and readopted as a second emergency rule at the March and April 2009 Regents meetings. A Notice of Emergency Adoption and Proposed Rule Making was published in the State Register on January 7, 2009.

State Education Department staff have worked with the Legislature and with museum constituents to develop revised standards for museum deaccessioning that have been incorporated into recently introduced legislation (A.6959) applicable to all museums. Now that legislation has been introduced, further revisions to the proposed rule are necessary to conform to the legislation. Pursuant to the State Administrative Procedure Act, a revised rule cannot be permanently adopted until after publication of a Notice of Revised Rule Making and expiration of a 30-day public comment period. Because the Board of Regents meets at fixed intervals, the earliest the proposed revised rule could be presented for permanent adoption, after publication of the Notice and expiration of the 30-day public comment period, would be the September 14-15, 2009 Regents meeting. However, the emergency rule adopted at the April Regents meeting is only effective for 60 days and will expire on July 16, before the September 2009 Regents meeting. If the rule were to lapse, collections held by museums and historical societies could be threatened by inappropriate deaccessioning by sale, disposal or transfer. To avoid the adverse effects of a lapse in the emergency rule, a

third emergency action is necessary at the June Regents meeting to readopt the rule, effective July 17, 2009.

It is anticipated that the proposed revised rule will be presented for permanent adoption at the September 14-15, 2009 Regents meeting, after publication of a Notice of Revised Rule Making in the State Register and expiration of the 30-day public comment period prescribed for revised rule makings in the State Administrative Procedure Act.

AMENDMENT OF THE RULES OF THE BOARD OF REGENTS

Pursuant to sections 101, 207, 215, 216, 217 and 233-aa of the Education Law and Chapter 220 of the Laws of 2008

1. Paragraph (7) of subdivision (a) of section 3.27 of the Rules of the Board of Regents is amended, effective July 17, 2009, to read as follows, provided that such amendment shall expire and be deemed repealed September 14, 2009:

(7) Collection means one or more original tangible objects, artifacts, records or specimens, including art generated by video, computer or similar means of projection and display, that have intrinsic historical, artistic, cultural, scientific, natural history or other value that share like characteristics or a common base of association and are accessioned; for purposes of this section, historic structures owned by an institution shall be considered as part of a collection only when so designated by the board of trustees of the institution by vote conducted on or before December 19, 2008;

2. Paragraphs (6) and (7) of subdivision (c) of section 3.27 of the Rules of the Board of Regents are amended, effective July 17, 2009, to read as follows, provided that such amendment shall expire and be deemed repealed September 14, 2009:

(6) Collections Care and Management. The institution shall:

(i) own, maintain and/or exhibit original tangible objects, artifacts, records, specimens, buildings, archeological remains, properties, lands and/or other tangible and intrinsically valuable resources that are appropriate to its mission;

(ii) ensure that the acquisition and deaccessioning of its collection is consistent with its corporate purposes and mission statement, including that deaccessioning of items or material in its collection is limited to the circumstances prescribed in paragraph (7) of this subdivision;

(iii) have a written collections management policy providing clear standards to guide institutional decisions regarding the collection, that is in regular use, available to the public upon request, filed with the commissioner for inspection by anyone wishing to examine it; and which, at a minimum, satisfactorily addresses the following subject areas:

(a) acquisition. The criteria and processes used for determining what items are added to the collections;

(b) loans. The criteria and processes used for borrowing items owned by other institutions and individuals, and for lending items from the collections;

(c) preservation. A statement of intent to ensure the adequate care and preservation of collections;

(d) access. A statement indicating intent to allow reasonable access to the collections by persons with legitimate reasons to access them; and

(e) deaccession. The criteria and process (including levels of permission) used for determining what items are to be removed from the collections, which shall be consistent with paragraph (7) of this subdivision, and a statement limiting the use of any funds derived therefrom in accordance with subparagraph [(vii)] (vi) of this paragraph;

(iv) ensure that collections or any individual part thereof and the proceeds derived therefrom shall not be used as collateral for a loan;

(v) ensure that collections shall not be capitalized; and

(vi) ensure that proceeds derived from the deaccessioning of any property from the institution's collection be restricted in a separate fund to be used only for the acquisition, preservation, protection or care of collections. In no event shall proceeds derived from the deaccessioning of any property from the collection be used for operating expenses, for the payment of outstanding debt, or for capital expenses other

than such expenses incurred to preserve, protect or care for an historic building which has been designated part of its collections in accordance with paragraph (7) of subdivision (a) of this section, or for any purposes other than the acquisition, preservation, protection or care of collections.

(7) Deaccessioning of collections. An institution may deaccession an item or material in its collection only where one or more of the following criteria have been met:

(i) the item or material is not relevant to the mission of the institution;

(ii) the item or material has failed to retain its identity, or has been lost or stolen and has not been recovered;

(iii) the item or material duplicates other items or material in the collection of the institution and is not necessary for research or educational purposes; and/or

(iv) the institution is unable to conserve the item or material in a responsible manner.

(8) Education and Interpretation. The institution shall offer programmatic accommodation for individuals with disabilities to the extent required by law.