

S T A T E O F N E W Y O R K

6959--A

2009-2010 Regular Sessions

I N A S S E M B L Y

March 17, 2009

Introduced by M. of A. BRODSKY, TITONE, REILLY, SPANO, HYER-
SPENCER,
-- JAFFEE, ZEBROWSKI, KOON, MAYERSOHN, MILLMAN -- Multi-Sponsored by
-- M. of A. McENENY, NOLAN, RAIA, SCHIMEL, WEISENBERG -- read once
and
-- referred to the Committee on Tourism, Arts and Sports Development
-- reported and referred to the Committee on Ways and Means --
committee
discharged, bill amended, ordered reprinted as amended and
recommitted
to said committee

AN ACT to amend the education law, in relation to the deaccessioning
of
property by collecting institutions; and to repeal certain
provisions
of such law relating thereto

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND
ASSEM-
BLY, DO ENACT AS FOLLOWS:

1 Section 1. Legislative findings. The legislature hereby finds
and
2 determines that the state of New York has the finest collecting
insti-
3 tutions in the world, giving the people of the state and visitors
an
4 unequalled opportunity to experience the world's cultural,
artistic,
5 historical, natural history and scientific heritage. These
collecting
6 institutions exist across the state, range in size from the smallest
to
7 the largest institutions in the world, and are all creatures of
state
8 government. Some are directly chartered by the legislature, and some
by
9 the board of regents, but all are subject to the public interest as
set
10 forth in law, regulation, charter requirement, and sound
collecting

11 institution practice as also set forth by collecting institutions
asso-
12 ciations and accreditation organizations. This legislation is
intended
13 to assure and enhance the continuing interest of collecting
institutions
14 in abiding by and protecting the public interest.
15 The legislature further finds and determines that there is a need
for
16 clarification and standards with respect to the ways collecting
insti-
17 tutions acquire, hold, and dispose of property, especially property
that
18 is part of their collections. The need for such improvement in
state
19 policy and practice is a long-standing concern, and has been
highlighted

EXPLANATION--Matter in ITALICS (underscored) is new; matter in
brackets

[] is old law to be omitted.

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1 by the recent and widely discussed increase in financial pressure
on
2 cultural institutions. The legislature notes attempts in New York
and
3 elsewhere to monetize collections and the asserted use of those
monies
4 for purposes other than the protection and expansion of collections.
The
5 legislature further finds and determines that such practices are
incon-
6 sistent with the interest of the people of the state, are
inconsistent
7 with requirements of governing documents, accreditation standards,
and
8 accepted collecting institution practices, and, if unchecked,
will
9 permanently endanger the integrity and existence of collecting
institu-
10 tion collections handed to us by earlier generations as a
sacred,
11 cultural, ethical, and public trust.
12 The legislature therefore finds and declares that the requirements
of
13 this law are necessary to protect the cultural, artistic,
historical,
14 and scientific heritage of the state, and the public interest,
are
15 consistent with long-standing professional standards set forth by
the
16 collecting institution community, and are consistent with the
statutory

17 and constitutional responsibilities of the legislature and the board
of
18 regents.

19 S 2. The education law is amended by adding a new section 233-aaa
to
20 read as follows:

21 S 233-AAA. ACCESSION AND DEACCESSION OF PROPERTY. 1. FOR THE
PURPOSES
22 OF THIS ARTICLE THE FOLLOWING TERMS SHALL HAVE THE FOLLOWING MEANINGS:

23 (A) "COLLECTING INSTITUTION" MEANS A MUSEUM OR OTHER CULTURAL
OR

24 EDUCATIONAL INSTITUTION THAT IS OPERATED BY A GOVERNMENTAL
ENTITY,
25 EDUCATION CORPORATION, NOT-FOR-PROFIT CORPORATION OR CHARITABLE
TRUST
26 AND OWNS OR HOLDS COLLECTIONS, OR HAS COLLECTING AS A STATED PURPOSE
IN
27 ITS CHARTER, CERTIFICATE OF INCORPORATION OR OTHER ORGANIZING
DOCUMENTS,
28 OR INTENDS TO OWN OR HOLD COLLECTIONS.

29 (B) "ACCESSIONING" MEANS THE PLACEMENT OF AN ITEM INTO A
COLLECTING
30 INSTITUTION'S COLLECTION AND ON ITS COLLECTION REGISTER FOLLOWING
PROCE-
31 DURES THAT ARE SET FORTH IN THE COLLECTING INSTITUTION'S
COLLECTION
32 MANAGEMENT POLICY AND MISSION STATEMENT.

33 (C) "DEACCESSIONING" MEANS THE REMOVAL OF AN ITEM FROM A
COLLECTING
34 INSTITUTION'S COLLECTION AND ITS COLLECTION REGISTER FOLLOWING
PROCE-
35 DURES THAT ARE SET FORTH IN THE COLLECTING INSTITUTION'S
COLLECTION
36 MANAGEMENT POLICY AND CONSISTENT WITH ITS MISSION STATEMENT.

37 (D) "DISPOSAL" MEANS THE REMOVAL OF AN ITEM FROM A COLLECTING
INSTI-
38 TUTION'S OWNERSHIP BY MEANS OF ITS SALE, DESTRUCTION, TRANSFER,
LEASE,
39 GIFT OR ANY OTHER MEANS.

40 (E) "MISSION STATEMENT" MEANS A STATEMENT APPROVED BY THE
COLLECTING
41 INSTITUTION'S GOVERNING BODY, WHICH IS MODELED ON, DERIVED FROM
AND
42 CONSISTENT WITH THE COLLECTING INSTITUTION'S CORPORATE PURPOSES AS
SET
43 FORTH IN ITS CHARTER, CERTIFICATE OF INCORPORATION OR OTHER
ORGANIZING

44 DOCUMENT THAT IDENTIFIES ITS PURPOSES, BENEFITS, ACTIVITIES AND
PRAC-
45 TICES.

46 (F) "COLLECTION MANAGEMENT POLICY" MEANS A STATEMENT APPROVED BY
THE
47 COLLECTING INSTITUTION'S GOVERNING BODY AND ADMINISTERED BY ITS
BOARD,
48 OFFICERS, EMPLOYEES, AND CONSULTANTS WHICH INCLUDES ALL POLICIES
AND

49 PRACTICES RELATED TO THE PRESERVATION, ACCESSIBILITY, AND USE OF
THE
50 COLLECTING INSTITUTION'S COLLECTIONS AND ASSOCIATED DATA, INCLUDING
LOAN
51 MANAGEMENT, COLLECTION GROWTH AND REFINEMENT; DISCHARGE OF THE
PUBLIC
52 TRUST WITH RESPECT TO COLLECTIONS; METHODS OF ACCESSIONING,
DEACCESSION-
53 ING, AND DISPOSAL; PLANNING AND ESTABLISHING COLLECTION
PRIORITIES;
54 OBTAINING, ALLOCATING, AND MANAGING RESOURCES, COORDINATING
COLLECTION
55 PROCESSES WITH THE NEEDS OF CURATION, PRESERVATION, COLLECTION USE;
AND

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1 A PUBLIC REGISTER OF ACCESSIONED ITEMS, WHICH IS MODELED ON,
DERIVED

2 FROM AND CONSISTENT WITH THE COLLECTING INSTITUTION'S MISSION
STATEMENT.

3 (G) "COLLECTION" MEANS THE TANGIBLE OR INTANGIBLE THINGS OWNED
AND

4 ACCESSIONED BY A COLLECTING INSTITUTION, INCLUDING THINGS THAT
ARE

5 GENERATED BY VIDEO, COMPUTER OR SIMILAR MEANS OF PROJECTION AND
DISPLAY,

6 INCLUDING CONCEPTS, THAT HAVE INTRINSIC HISTORICAL, ARTISTIC,
CULTURAL,

7 SCIENTIFIC, NATURAL HISTORY OR OTHER VALUE.

8 (H) "ITEM" MEANS AN INDIVIDUAL ELEMENT OF A COLLECTION.

9 (I) "REFINEMENT" MEANS CHANGING THE ITEMS IN A COLLECTING
INSTI-

10 TUTION'S COLLECTION IN ORDER TO FULFILL ITS MISSION STATEMENT
AND

11 COLLECTIONS MANAGEMENT POLICY.

12 2. EACH COLLECTING INSTITUTION SHALL DEVELOP, ADOPT AND PUBLISH
A

13 COLLECTION MANAGEMENT POLICY AND A MISSION STATEMENT. EACH
COLLECTING

14 INSTITUTION SHALL BE BOUND BY ITS COLLECTION MANAGEMENT POLICY AND
ITS

15 MISSION STATEMENT.

16 3. A COLLECTING INSTITUTION MUST ACCESSION ALL ITEMS IN ITS
POSSESSION

17 THAT ARE CONSISTENT WITH ITS MISSION STATEMENT AND COLLECTION
MANAGEMENT

18 POLICY.

19 4. EACH COLLECTING INSTITUTION SHALL PUBLISH A REGISTER OF ITEMS
IN

20 ITS COLLECTION. SUCH REGISTER SHALL BE PUBLISHED WITHIN THREE YEARS
OF

21 THE EFFECTIVE DATE OF THIS SECTION. THE BOARD OF REGENTS MAY EXTEND
THE

22 DEADLINE AFTER GOOD CAUSE HAS BEEN SHOWN. NOTWITHSTANDING THE
FOREGOING,

23 AS OF THE EFFECTIVE DATE OF THIS SECTION, ALL COLLECTING
INSTITUTIONS

24 SHALL PUBLISH A REGISTER OF NEWLY ACCESSIONED OR DEACCESSIONED
ITEMS.
25 ANY REGULATIONS PROMULGATED BY THE REGENTS SHALL INCLUDE
REASONABLE
26 STANDARDS AND REQUIREMENTS FOR SUCH REGISTER WHICH SHALL INCLUDE THE
USE
27 OF CLASSES OF ITEMS WHERE THE INDIVIDUAL LISTING OF ITEMS WOULD
BE
28 BURDENSOME.
29 5. NO COLLECTING INSTITUTION MAY DISPOSE OF AN ITEM OR ITEMS IN
ITS
30 COLLECTION EXCEPT AS SET FORTH IN THIS STATUTE AND IN ITS MISSION
STATE-
31 MENT AND COLLECTIONS MANAGEMENT POLICY AND NOT UNTIL THE ITEM OR
ITEMS
32 HAVE BEEN DEACCESSIONED.
33 6. PROCEEDS FROM DISPOSAL OF AN ITEM SHALL ONLY BE USED FOR
PURPOSES
34 SET FORTH IN THIS STATUTE.
35 7. NO ITEM IN A COLLECTING INSTITUTION'S COLLECTION MAY BE USED
AS
36 COLLATERAL OR MAY BE CAPITALIZED. NOTHING IN THIS SECTION SHALL
AFFECT
37 ANY COLLATERALIZATION OR CAPITALIZATION AGREEMENT, ENTERED INTO BY
A
38 COLLECTING INSTITUTION IN EXISTENCE FOR OVER SEVENTY-FIVE YEARS
AND
39 WHOSE CERTIFICATE OF INCORPORATION, AS AMENDED, HAS BEEN FILED WITH
THE
40 SECRETARY OF STATE, THAT IS ALREADY IN EFFECT OR PREVENT ITEMS
PLEDGED
41 AS COLLATERAL OR CAPITALIZED ON THE EFFECTIVE DATE OF THIS SECTION
TO
42 CONTINUE TO BE USED AS COLLATERAL OR CAPITALIZED AT ANY TIME IN
THE
43 FUTURE PROVIDING THAT THE ITEMS REMAIN IN THE POSSESSION OF THE
COLLECT-
44 ING INSTITUTION EXCEPT THAT NOTHING HEREIN SHALL IMPAIR A
LENDER'S
45 RIGHTS UNDER A COLLATERALIZATION AGREEMENT TO FORECLOSE ON THE
COLLAT-
46 ERAL UNDER THE TERMS OF THE AGREEMENT. THE EXISTENCE OF ANY
COLLATERALI-
47 ZATION OR CAPITALIZATION AGREEMENT SHALL BE DISCLOSED TO THE
DEPARTMENT.
48 8. A COLLECTING INSTITUTION MAY DEACCESSION AN ITEM IN ITS
COLLECTION
49 ONLY IF ONE OR MORE OF THE FOLLOWING CRITERIA HAVE BEEN MET:
50 (A) THE ITEM IS INCONSISTENT WITH THE MISSION OF THE COLLECTING
INSTI-
51 TUTION AS SET FORTH IN ITS MISSION STATEMENT;
52 (B) THE ITEM HAS FAILED TO RETAIN ITS IDENTITY;
53 (C) THE ITEM IS REDUNDANT;
54 (D) THE ITEM'S PRESERVATION AND CONSERVATION NEEDS ARE BEYOND
THE
55 CAPACITY OF THE COLLECTING INSTITUTION TO PROVIDE;

1 (E) THE ITEM IS DEACCESSIONED TO ACCOMPLISH REFINEMENT OF
COLLECTIONS
2 AS REQUIRED BY AND/OR STATED IN ITS COLLECTION MANAGEMENT POLICY;
3 (F) IT HAS BEEN ESTABLISHED THAT THE ITEM IS INAUTHENTIC;
4 (G) THE COLLECTING INSTITUTION IS REPATRIATING THE ITEM OR
RETURNING
5 THE ITEM TO ITS RIGHTFUL OWNER;
6 (H) THE COLLECTING INSTITUTION IS RETURNING THE ITEM TO THE DONOR,
OR
7 THE DONOR'S HEIRS OR ASSIGNS, TO FULFILL DONOR RESTRICTIONS RELATING
TO
8 THE ITEM WHICH THE COLLECTING INSTITUTION IS NO LONGER ABLE TO MEET;
9 (I) THE ITEM PRESENTS A HAZARD TO PEOPLE OR OTHER COLLECTION ITEMS.
10 9. THE BOARD OF REGENTS IS DIRECTED TO CREATE A STATEWIDE
REGISTER
11 AVAILABLE ON THE INTERNET FOR THE PURPOSES OF COLLECTING AND
PROVIDING
12 PUBLIC INFORMATION ABOUT DEACCESSIONING, WHICH SHALL INCLUDE THE
ABILITY
13 OF A COLLECTING INSTITUTION TO LIST AN ITEM FOR ACTUAL OR
POTENTIAL
14 DEACCESSIONING.
15 10. (A) PROCEEDS FROM THE DISPOSAL OF AN ITEM OR ITEMS MAY BE USED
FOR
16 THE ACQUISITION OF ANOTHER ITEM OR ITEMS FOR THE COLLECTION AND/OR
FOR
17 THE PRESERVATION, PROTECTION OR CARE OF AN ITEM OR ITEMS IN
THE
18 COLLECTION. IN NO EVENT, HOWEVER, SHALL PROCEEDS DERIVED FROM
THE
19 DISPOSAL OF AN ITEM OR ITEMS FROM A COLLECTION BE USED FOR
TRADITIONAL
20 AND CUSTOMARY OPERATING EXPENSES. NOTHING IN THIS SECTION SHALL
LIMIT
21 THE ABILITY OF A COLLECTING INSTITUTION TO SET MORE RESTRICTIVE
POLICIES
22 RELATING TO THE USE OF PROCEEDS FROM A DISPOSED ITEM.
23 (B) A GOVERNMENTAL ENTITY OPERATING A COLLECTING INSTITUTION
SHALL
24 ESTABLISH A COLLECTION RESERVE FUND. PROCEEDS RECEIVED FROM THE SALE
OF
25 A DISPOSED ITEM SHALL BE USED TO PAY OFF ANY REMAINING DEBT INCURRED
IN
26 THE PURCHASE OF THE DEACCESSIONED ITEM THAT WAS SOLD. ANY MONEYS
REMAIN-
27 ING AFTER THE PAYMENT OF SUCH DEBT SHALL BE PAID INTO THE
COLLECTION
28 RESERVE FUND AND SHALL BE DEPOSITED AND SECURED IN THE MANNER
PROVIDED
29 BY SECTION TEN OF THE GENERAL MUNICIPAL LAW. THE GOVERNMENTAL
COLLECTING
30 INSTITUTION MAY USE MONEYS FROM THE COLLECTION RESERVE FUND ONLY FOR
THE
31 PURPOSES AUTHORIZED IN PARAGRAPH (A) OF THIS SUBDIVISION.
32 11. THE BOARD OF REGENTS SHALL ADOPT RULES OR REGULATIONS TO
IMPLEMENT

33 THE PROVISIONS OF THIS SECTION.

34 S 3. The board of regents is hereby authorized and directed,
in

35 consultation with groups and individuals who have expertise in
the

36 field, to consider and make recommendations concerning whether
collect-

37 ing institutions should include buildings in their collection.
Such

38 study shall include, but not be limited to:

39 (a) The reasons for the inclusion of a building in a collecting
insti-
40 tution's collection;

41 (b) Criteria for determining when it is permissible to include
a

42 building in a collecting institution's collection;

43 (c) Whether funds from the sale of disposed items can be used to
care

44 for the physical well-being of the structure and if so what
limitations,

45 if any, should there be.

46 The regents shall submit a copy of the study to the governor,
the

47 temporary president of the senate, the speaker of the assembly,
the

48 chairperson of the senate higher education committee and the
chairperson

49 of the assembly higher education committee no later than six months
from

50 the effective date of this act.

51 S 4. Paragraph (a) of subdivision 5 of section 233-a of the
education

52 law is REPEALED and a new paragraph (a) is added to read as follows:

53 (A) PROCEEDS FROM THE DISPOSAL OF AN ITEM OR ITEMS FROM A
COLLECTING

54 INSTITUTION'S COLLECTION MAY BE USED FOR THE ACQUISITION OF ANOTHER
ITEM

55 OR ITEMS FOR THE COLLECTING INSTITUTION'S COLLECTION AND/OR FOR
THE

56 PRESERVATION, PROTECTION OR CARE OF AN ITEM OR ITEMS IN THE
COLLECTION.

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1 IN NO EVENT, HOWEVER, SHALL PROCEEDS DERIVED FROM THE DISPOSAL OF
AN

2 ITEM OR ITEMS FROM A COLLECTING INSTITUTION'S COLLECTION BE USED
FOR

3 TRADITIONAL AND CUSTOMARY OPERATING EXPENSES. NOTHING IN THIS
SECTION

4 SHALL LIMIT THE ABILITY OF A COLLECTING INSTITUTION TO SET MORE
RESTRIC-

5 TIVE POLICIES RELATING TO THE USE OF PROCEEDS FROM A DISPOSED ITEM.

6 S 5. Subdivision 5 of section 233-aa of the education law is
REPEALED

7 and a new subdivision 5 is added to read as follows:

8 5. PROCEEDS FROM THE DISPOSAL OF AN ITEM OR ITEMS FROM A
COLLECTING

9 INSTITUTION'S COLLECTION MAY BE USED FOR THE ACQUISITION OF ANOTHER
ITEM
10 OR ITEMS FOR THE COLLECTION AND/OR FOR THE PRESERVATION,
PROTECTION
11 COLLECTING INSTITUTION'S OR CARE OF AN ITEM OR ITEMS IN THE
COLLECTION.
12 IN NO EVENT, HOWEVER, SHALL PROCEEDS DERIVED FROM THE DISPOSAL OF
AN
13 ITEM OR ITEMS FROM A COLLECTING INSTITUTION'S COLLECTION BE USED
FOR
14 TRADITIONAL AND CUSTOMARY OPERATING EXPENSES. NOTHING IN THIS
SECTION
15 SHALL LIMIT THE ABILITY OF A COLLECTING INSTITUTION TO SET MORE
RESTRIC-
16 TIVE POLICIES RELATING TO THE USE OF PROCEEDS FROM A DISPOSED ITEM.
17 S 6. This act shall take effect immediately.