

4584

2009-2010 Regular Sessions

I N S E N A T E

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Introduced by Sens. SERRANO, HASSELL-THOMPSON, LITTLE, MONTGOMERY, MORAHAN, SCHNEIDERMAN -- read twice and ordered printed, and when printed to be committed to the Committee on Cultural Affairs, Tourism, Parks and Recreation

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

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, 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 museums in the
3 world, giving the people of the state and visitors an unequalled opportu-
4 nity to experience the world's cultural, artistic, historical, natural
5 history and scientific heritage. These museums exist across the state,
6 range in size from the smallest to the largest institutions in the
7 world, and are all creatures of state government. Some are directly
8 chartered by the legislature, and some by the board of regents, but all
9 are subject to the public interest as set forth in law, regulation,
10 charter requirement, and sound museum practice as set forth by museum
11 associations and accreditation organizations. The state's museums have
12 been exemplary in abiding by and protecting the public interest.

13 The legislature further finds and determines that there is a need for
14 clarification and standards with respect to the ways museums acquire,
15 hold, and dispose of property, especially property that is part of their
16 collections. The need for such improvement in state policy and practice
17 is of long-standing concern, but has been highlighted by the recent and
18 widely discussed increase in financial pressure on cultural insti-
19 tutions. The legislature notes attempts in New York and elsewhere to
20 monetize museum collections and the asserted use of those monies for
21 purposes other than the protection and expansion of collections. The
22 legislature further finds and determines that such practices are incon-

EXPLANATION--Matter in ITALICS (underscored) is new; matter in brackets
[] is old law to be omitted.

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1 sistent with the interest of the people of the state, are inconsistent
2 with requirements of governing documents, accreditation standards, and
3 accepted museum practices, and, if unchecked, will permanently endanger
4 the integrity and existence of museum collections handed to us by earli-
5 er generations as a sacred cultural and ethical trust.

6 The legislature therefore finds and declares that the requirements of
7 this law are necessary to protect the cultural, artistic, historical,
8 and scientific heritage of the state, and the public interest, are
9 consistent with long-standing professional standards set forth by the
10 museum community, and are consistent with the statutory and constitu-
11 tional responsibilities of the legislature and the board of regents.

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

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

16 (A) "MUSEUM" MEANS ANY INSTITUTION HAVING COLLECTING AS A STATED
17 PURPOSE IN ITS CHARTER, CERTIFICATE OF INCORPORATION, OR OTHER ORGANIZ-
18 ING DOCUMENTS, OR OWNING OR HOLDING COLLECTIONS, OR INTENDING TO OWN OR
19 HOLD COLLECTIONS THAT IS A GOVERNMENTAL ENTITY, EDUCATION CORPORATION,
20 NOT-FOR-PROFIT CORPORATION, OR CHARITABLE TRUST.

21 (B) "ACCESSIONING" MEANS THE PLACEMENT OF AN ITEM INTO A MUSEUM'S
22 COLLECTION AND ON ITS COLLECTION REGISTER FOLLOWING PROCEDURES THAT ARE
23 SET FORTH IN THE MUSEUM'S COLLECTION MANAGEMENT POLICY AND MISSION
24 STATEMENT.

25 (C) "DEACCESSIONING" MEANS THE REMOVAL OF AN ITEM FROM A MUSEUM'S
26 COLLECTION AND ITS COLLECTION REGISTER FOLLOWING PROCEDURES THAT ARE SET
27 FORTH IN THE MUSEUM'S COLLECTION MANAGEMENT POLICY AND CONSISTENT WITH
28 ITS MISSION STATEMENT.

29 (D) "DISPOSAL" MEANS THE REMOVAL OF AN ITEM FROM A MUSEUM'S OWNERSHIP
30 BY MEANS OF ITS SALE, DESTRUCTION, TRANSFER, LEASE, GIFT OR ANY OTHER
31 MEANS.

32 (E) "MISSION STATEMENT" MEANS A STATEMENT APPROVED BY THE MUSEUM'S
33 GOVERNING BODY, WHICH IS MODELED ON, DERIVED FROM AND CONSISTENT WITH
34 THE MUSEUM'S CORPORATE PURPOSES AS SET FORTH IN ITS CHARTER, CERTIFICATE
35 OF INCORPORATION OR OTHER ORGANIZING DOCUMENT THAT IDENTIFIES ITS
36 PURPOSES, BENEFITS, ACTIVITIES AND PRACTICES.

37 (F) "COLLECTION MANAGEMENT POLICY" MEANS A STATEMENT APPROVED BY THE
38 MUSEUM'S GOVERNING BODY AND ADMINISTERED BY ITS BOARD, OFFICERS, EMPLOY-
39 EES, AND CONSULTANTS WHICH INCLUDES ALL POLICIES AND PRACTICES RELATED
40 TO THE PRESERVATION, ACCESSIBILITY, AND USE OF THE MUSEUM'S COLLECTIONS
41 AND ASSOCIATED DATA, INCLUDING LOAN MANAGEMENT, COLLECTION GROWTH AND
42 REFINEMENT; METHODS OF ACCESSIONING, DEACCESSIONING, AND DISPOSAL; PLAN-
43 NING AND ESTABLISHING COLLECTION PRIORITIES; OBTAINING, ALLOCATING, AND
44 MANAGING RESOURCES, COORDINATING COLLECTION PROCESSES WITH THE NEEDS OF
45 CURATION, PRESERVATION, COLLECTION USE; AND A PUBLIC REGISTER OF ACCES-
46 SIONED ITEMS, WHICH IS MODELED ON, DERIVED FROM AND CONSISTENT WITH THE
47 MUSEUM'S MISSION STATEMENT.

48 (G) "COLLECTION" MEANS THE TANGIBLE OR INTANGIBLE THINGS OWNED AND
49 ACCESSIONED BY A MUSEUM, INCLUDING THINGS THAT ARE GENERATED BY VIDEO,
50 COMPUTER OR SIMILAR MEANS OF PROJECTION AND DISPLAY, INCLUDING CONCEPTS,
51 THAT HAVE INTRINSIC HISTORICAL, ARTISTIC, CULTURAL, SCIENTIFIC, NATURAL
52 HISTORY OR OTHER VALUE.

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

54 (I) "REFINEMENT" MEANS CHANGING THE ITEMS IN A MUSEUM'S COLLECTION IN
55 ORDER TO FULFILL ITS MISSION STATEMENT AND COLLECTIONS MANAGEMENT POLI-
56 CY.

1 2. EACH MUSEUM SHALL DEVELOP, ADOPT AND PUBLISH A COLLECTION MANAGE-
2 MENT POLICY AND A MISSION STATEMENT. EACH MUSEUM SHALL BE BOUND BY ITS
3 COLLECTION MANAGEMENT POLICY AND ITS MISSION STATEMENT.

4 3. A MUSEUM MUST ACCESSION ALL ITEMS IN ITS POSSESSION THAT ARE
5 CONSISTENT WITH ITS MISSION STATEMENT AND COLLECTION MANAGEMENT POLICY.

6 4. EACH MUSEUM SHALL PUBLISH A REGISTER OF THE CONTENTS OF ITS
7 COLLECTION.

8 5. NO MUSEUM MAY DISPOSE OF AN ITEM OR ITEMS IN ITS COLLECTION EXCEPT
9 AS SET FORTH IN THIS STATUTE AND IN ITS MISSION STATEMENT AND
10 COLLECTIONS MANAGEMENT POLICY AND NOT UNTIL THE ITEM OR ITEMS HAVE BEEN
11 DEACCESSIONED.

12 6. PROCEEDS FROM DISPOSAL OF AN ITEM IN ITS COLLECTION SHALL ONLY BE
13 USED FOR PURPOSES SET FORTH IN THIS STATUTE.

14 7. NO ITEM IN A MUSEUM'S COLLECTION MAY BE USED AS COLLATERAL OR MAY
15 BE CAPITALIZED.

16 8. A MUSEUM MAY DEACCESSION AN ITEM IN ITS COLLECTION ONLY IF ONE OR
17 MORE OF THE FOLLOWING CRITERIA HAVE BEEN MET:

18 (A) THE ITEM IS INCONSISTENT WITH THE MISSION OF THE MUSEUM AS SET
19 FORTH IN ITS MISSION STATEMENT;

20 (B) THE ITEM HAS FAILED TO RETAIN ITS IDENTITY;

21 (C) THE ITEM IS REDUNDANT;

22 (D) THE ITEM'S PRESERVATION AND CONSERVATION NEEDS ARE BEYOND THE
23 CAPACITY OF THE MUSEUM TO PROVIDE;

24 (E) THE ITEM IS DEACCESSIONED TO ACCOMPLISH REFINEMENT OF COLLECTIONS
25 AS REQUIRED BY AND/OR STATED IN ITS COLLECTION MANAGEMENT POLICY;

26 (F) IT HAS BEEN ESTABLISHED THAT THE ITEM IS INAUTHENTIC;

27 (G) THE MUSEUM IS REPATRIATING THE ITEM OR RETURNING THE ITEM TO ITS
28 RIGHTFUL OWNER;

29 (H) THE MUSEUM IS RETURNING THE ITEM TO THE DONOR, OR THE DONOR'S
30 HEIRS OR ASSIGNS, TO FULFILL DONOR RESTRICTIONS RELATING TO THE ITEM
31 WHICH THE MUSEUM IS NO LONGER ABLE TO MEET;

32 (I) THE ITEM PRESENTS A HAZARD TO PEOPLE OR OTHER COLLECTION ITEMS.

33 9. ANY MUSEUM DISPOSING OF AN ITEM MUST MAKE A GOOD FAITH EFFORT TO
34 SELL OR TRANSFER SUCH ITEM TO ANOTHER MUSEUM IN NEW YORK STATE. IF SUCH
35 SALE OR TRANSFER CANNOT BE ACCOMPLISHED A MUSEUM MUST MAKE A GOOD FAITH
36 EFFORT TO SELL OR TRANSFER SUCH ITEM TO ANOTHER PUBLIC MUSEUM.

37 10. PROCEEDS FROM THE DISPOSAL OF AN ITEM OR ITEMS FROM A MUSEUM'S
38 COLLECTION MAY BE USED FOR THE ACQUISITION OF ANOTHER ITEM OR ITEMS FOR
39 THE MUSEUM'S COLLECTION AND/OR FOR THE PRESERVATION, PROTECTION OR CARE
40 OF AN ITEM OR ITEMS IN THE COLLECTION. IN NO EVENT, HOWEVER, SHALL
41 PROCEEDS DERIVED FROM THE DISPOSAL OF AN ITEM OR ITEMS FROM A MUSEUM'S
42 COLLECTION BE USED FOR TRADITIONAL AND CUSTOMARY OPERATING EXPENSES.
43 NOTHING IN THIS SECTION SHALL LIMIT THE ABILITY OF A MUSEUM TO SET MORE
44 RESTRICTIVE POLICIES RELATING TO THE USE OF PROCEEDS FROM A DISPOSED
45 ITEM.

46 11. THE BOARD OF REGENTS SHALL ADOPT RULES OR REGULATIONS TO IMPLEMENT
47 THE PROVISIONS OF THIS SECTION.

48 S 3. The board of regents is hereby authorized and directed to consid-
49 er and make recommendations concerning whether museums should include
50 buildings in their collection. Such study shall include, but not be
51 limited to:

52 (a) The reasons for the inclusion of a building in a museum's
53 collection;

54 (b) Criteria for determining when it is permissible to include a
55 building in a museum's collection;

1 (c) Whether funds from the sale of disposed items can be used to care
2 for the physical well-being of the structure and if so what limitations,
3 if any, should there be.

4 The regents shall submit a copy of the study to the governor, the
5 temporary president of the senate, the speaker of the assembly, the
6 chairperson of the senate higher education committee and the chairperson
7 of the assembly higher education committee no later than six months from
8 the effective date of this act.

9 S 4. Paragraph (a) of subdivision 5 of section 233-a of the education
10 law is REPEALED and a new paragraph (a) is added to read as follows:

11 (A) PROCEEDS FROM THE DISPOSAL OF AN ITEM OR ITEMS FROM A MUSEUM'S
12 COLLECTION MAY BE USED FOR THE ACQUISITION OF ANOTHER ITEM OR ITEMS FOR
13 THE MUSEUM'S COLLECTION AND/OR FOR THE PRESERVATION, PROTECTION OR CARE
14 OF AN ITEM OR ITEMS IN THE COLLECTION. IN NO EVENT, HOWEVER, SHALL
15 PROCEEDS DERIVED FROM THE DISPOSAL OF AN ITEM OR ITEMS FROM A MUSEUM'S
16 COLLECTION BE USED FOR TRADITIONAL AND CUSTOMARY OPERATING EXPENSES.
17 NOTHING IN THIS SECTION SHALL LIMIT THE ABILITY OF A MUSEUM TO SET MORE
18 RESTRICTIVE POLICIES RELATING TO THE USE OF PROCEEDS FROM A DISPOSED
19 ITEM.

20 S 5. Subdivision 5 of section 233-aa of the education law is REPEALED
21 and a new subdivision 5 is added to read as follows:

22 5. PROCEEDS FROM THE DISPOSAL OF AN ITEM OR ITEMS FROM A MUSEUM'S
23 COLLECTION MAY BE USED FOR THE ACQUISITION OF ANOTHER ITEM OR ITEMS FOR
24 THE MUSEUM'S COLLECTION AND/OR FOR THE PRESERVATION, PROTECTION OR CARE
25 OF AN ITEM OR ITEMS IN THE COLLECTION. IN NO EVENT, HOWEVER, SHALL
26 PROCEEDS DERIVED FROM THE DISPOSAL OF AN ITEM OR ITEMS FROM A MUSEUM'S
27 COLLECTION BE USED FOR TRADITIONAL AND CUSTOMARY OPERATING EXPENSES.
28 NOTHING IN THIS SECTION SHALL LIMIT THE ABILITY OF A MUSEUM TO SET MORE
29 RESTRICTIVE POLICIES RELATING TO THE USE OF PROCEEDS FROM A DISPOSED
30 ITEM.

31 S 6. This act shall take effect immediately.