

3957

2011-2012 Regular Sessions

I N A S S E M B L Y

January 31, 2011

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Introduced by M. of A. ENGLEBRIGHT -- read once and referred to the  
Committee on Tourism, Parks, Arts and Sports Development

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 to proceeds from the deaccessioning of property  
from museums

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 act is intended to  
13 assure and enhance the continuing interest of collecting institutions in  
14 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  
20 by the recent and widely discussed increase in financial pressure on  
21 cultural institutions. The legislature notes attempts in this state and  
22 elsewhere to monetize collections and the asserted use of those monies  
23 for purposes other than the protection and expansion of collections. The

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

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1 legislature further finds and determines that such practices are incon-  
2 sistent with the interest of the people of the state, are inconsistent  
3 with requirements of governing documents, accreditation standards, and  
4 accepted collecting institution practices, and, if unchecked, will  
5 permanently endanger the integrity and existence of collecting institu-  
6 tion collections handed to us by earlier generations as a sacred,  
7 cultural, ethical and public trust.

8 The legislature therefore finds and declares that the requirements of  
9 this law are necessary to protect the cultural, artistic, historical and  
10 scientific heritage of the state, and the public interest, are consist-  
11 ent with long-standing professional standards set forth by the collect-  
12 ing institution community and are consistent with the statutory and  
13 constitutional responsibilities of the legislature and the board of  
14 regents.

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

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

19 (A) "COLLECTING INSTITUTION" MEANS A MUSEUM OR OTHER CULTURAL OR  
20 EDUCATIONAL INSTITUTION THAT IS OPERATED BY A GOVERNMENTAL ENTITY,  
21 EDUCATION CORPORATION, NOT-FOR-PROFIT CORPORATION OR CHARITABLE TRUST  
22 AND OWNS OR HOLDS COLLECTIONS, OR HAS COLLECTING AS A STATED PURPOSE IN  
23 ITS CHARTER, CERTIFICATE OF INCORPORATION OR OTHER ORGANIZING DOCUMENTS,  
24 OR INTENDS TO OWN OR HOLD COLLECTIONS.

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

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

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

36 (E) "MISSION STATEMENT" MEANS A STATEMENT APPROVED BY THE COLLECTING  
37 INSTITUTION'S GOVERNING BODY, WHICH IS MODELED ON, DERIVED FROM AND  
38 CONSISTENT WITH THE COLLECTING INSTITUTION'S CORPORATE PURPOSES AS SET  
39 FORTH IN ITS CHARTER, CERTIFICATE OF INCORPORATION OR OTHER ORGANIZING  
40 DOCUMENT THAT IDENTIFIES ITS PURPOSES, BENEFITS, ACTIVITIES AND PRAC-  
41 TICES.

42 (F) "COLLECTION MANAGEMENT POLICY" MEANS A STATEMENT APPROVED BY THE  
43 COLLECTING INSTITUTION'S GOVERNING BODY AND ADMINISTERED BY ITS BOARD,  
44 OFFICERS, EMPLOYEES AND CONSULTANTS WHICH INCLUDES ALL POLICIES AND  
45 PRACTICES RELATED TO THE PRESERVATION, ACCESSIBILITY AND USE OF THE  
46 COLLECTING INSTITUTION'S COLLECTIONS AND ASSOCIATED DATA, INCLUDING LOAN  
47 MANAGEMENT, COLLECTION GROWTH AND REFINEMENT; DISCHARGE OF THE PUBLIC  
48 TRUST WITH RESPECT TO COLLECTIONS; METHODS OF ACCESSIONING, DEACCESSION-  
49 ING AND DISPOSAL; PLANNING AND ESTABLISHING COLLECTION PRIORITIES;  
50 OBTAINING, ALLOCATING AND MANAGING RESOURCES, AND COORDINATING  
51 COLLECTION PROCESSES WITH THE NEEDS OF CURATION, PRESERVATION AND  
52 COLLECTION USE; AND A PUBLIC REGISTER OF ACCESSIONED ITEMS, WHICH IS  
53 MODELED ON, DERIVED FROM AND CONSISTENT WITH THE COLLECTING INSTI-  
54 TUTION'S MISSION STATEMENT.

55 (G) "COLLECTION" MEANS THE TANGIBLE OR INTANGIBLE THINGS OWNED AND  
56 ACCESSIONED BY A COLLECTING INSTITUTION, INCLUDING THINGS THAT ARE

1 GENERATED BY VIDEO, COMPUTER OR SIMILAR MEANS OF PROJECTION AND DISPLAY,  
2 INCLUDING CONCEPTS, THAT HAVE INTRINSIC HISTORICAL, ARTISTIC, CULTURAL,  
3 SCIENTIFIC, NATURAL HISTORY OR OTHER VALUE.

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

5 (I) "REFINEMENT" MEANS CHANGING THE ITEMS IN A COLLECTING INSTI-  
6 TUTION'S COLLECTION IN ORDER TO FULFILL ITS MISSION STATEMENT AND  
7 COLLECTIONS MANAGEMENT POLICY.

8 2. EACH COLLECTING INSTITUTION SHALL DEVELOP, ADOPT AND PUBLISH A  
9 COLLECTION MANAGEMENT POLICY AND A MISSION STATEMENT. EACH COLLECTING  
10 INSTITUTION SHALL BE BOUND BY ITS COLLECTION MANAGEMENT POLICY AND ITS  
11 MISSION STATEMENT.

12 3. A COLLECTING INSTITUTION MUST ACCESSION ALL ITEMS IN ITS POSSESSION  
13 THAT ARE CONSISTENT WITH ITS MISSION STATEMENT AND COLLECTION MANAGEMENT  
14 POLICY.

15 4. EACH COLLECTING INSTITUTION SHALL PUBLISH A REGISTER OF ITEMS IN  
16 ITS COLLECTION. SUCH REGISTER SHALL BE PUBLISHED WITHIN THREE YEARS OF  
17 THE EFFECTIVE DATE OF THIS SECTION. THE BOARD OF REGENTS MAY EXTEND THE  
18 DEADLINE AFTER GOOD CAUSE HAS BEEN SHOWN. NOTWITHSTANDING THE FOREGOING,  
19 AS OF THE EFFECTIVE DATE OF THIS SECTION, ALL COLLECTING INSTITUTIONS  
20 SHALL PUBLISH A REGISTER OF NEWLY ACCESSIONED OR DEACCESSIONED ITEMS.  
21 ANY REGULATIONS PROMULGATED BY THE REGENTS SHALL INCLUDE REASONABLE  
22 STANDARDS AND REQUIREMENTS FOR SUCH REGISTER WHICH SHALL INCLUDE THE USE  
23 OF CLASSES OF ITEMS WHERE THE INDIVIDUAL LISTING OF ITEMS WOULD BE  
24 BURDENSOME.

25 5. NO COLLECTING INSTITUTION MAY DISPOSE OF AN ITEM OR ITEMS IN ITS  
26 COLLECTION EXCEPT AS SET FORTH IN THIS STATUTE AND IN ITS MISSION STATE-  
27 MENT AND COLLECTIONS MANAGEMENT POLICY AND NOT UNTIL THE ITEM OR ITEMS  
28 HAVE BEEN DEACCESSIONED.

29 6. PROCEEDS FROM DISPOSAL OF AN ITEM SHALL ONLY BE USED FOR PURPOSES  
30 SET FORTH IN THIS STATUTE.

31 7. NO ITEM IN A COLLECTING INSTITUTION'S COLLECTION SHALL BE USED AS  
32 COLLATERAL OR BE CAPITALIZED. NOTHING IN THIS SECTION SHALL AFFECT ANY  
33 COLLATERALIZATION OR CAPITALIZATION AGREEMENT, ENTERED INTO BY A  
34 COLLECTING INSTITUTION IN EXISTENCE FOR OVER SEVENTY-FIVE YEARS AND  
35 WHOSE CERTIFICATE OF INCORPORATION, AS AMENDED, HAS BEEN FILED WITH THE  
36 SECRETARY OF STATE, THAT IS ALREADY IN EFFECT OR PREVENT ITEMS PLEDGED  
37 AS COLLATERAL OR CAPITALIZED ON THE EFFECTIVE DATE OF THIS SECTION TO  
38 CONTINUE TO BE USED AS COLLATERAL OR CAPITALIZED AT ANY TIME IN THE  
39 FUTURE PROVIDING THAT THE ITEMS REMAIN IN THE POSSESSION OF THE COLLECT-  
40 ING INSTITUTION EXCEPT THAT NOTHING IN THIS SUBDIVISION SHALL IMPAIR A  
41 LENDER'S RIGHTS UNDER A COLLATERALIZATION AGREEMENT TO FORECLOSE ON THE  
42 COLLATERAL UNDER THE TERMS OF THE AGREEMENT. THE EXISTENCE OF ANY COLLA-  
43 TERALIZATION OR CAPITALIZATION AGREEMENT SHALL BE DISCLOSED TO THE  
44 DEPARTMENT.

45 8. A COLLECTING INSTITUTION MAY DEACCESSION AN ITEM IN ITS COLLECTION  
46 ONLY IF ONE OR MORE OF THE FOLLOWING CRITERIA HAVE BEEN MET:

47 (A) THE ITEM IS INCONSISTENT WITH THE MISSION OF THE COLLECTING INSTI-  
48 TUTION AS SET FORTH IN ITS MISSION STATEMENT;

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

50 (C) THE ITEM IS REDUNDANT;

51 (D) THE ITEM'S PRESERVATION AND CONSERVATION NEEDS ARE BEYOND THE  
52 CAPACITY OF THE COLLECTING INSTITUTION TO PROVIDE;

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

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

1 (G) THE COLLECTING INSTITUTION IS REPATRIATING THE ITEM OR RETURNING  
2 THE ITEM TO ITS RIGHTFUL OWNER;

3 (H) THE COLLECTING INSTITUTION IS RETURNING THE ITEM TO THE DONOR, OR  
4 THE DONOR'S HEIRS OR ASSIGNS, TO FULFILL DONOR RESTRICTIONS RELATING TO  
5 THE ITEM WHICH THE COLLECTING INSTITUTION IS NO LONGER ABLE TO MEET; OR

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

7 9. THE BOARD OF REGENTS IS DIRECTED TO CREATE A STATEWIDE REGISTER  
8 AVAILABLE ON THE INTERNET FOR THE PURPOSES OF COLLECTING AND PROVIDING  
9 PUBLIC INFORMATION ABOUT DEACCESSIONING, WHICH SHALL INCLUDE THE ABILITY  
10 OF A COLLECTING INSTITUTION TO LIST AN ITEM FOR ACTUAL OR POTENTIAL  
11 DEACCESSIONING.

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

20 (B) A GOVERNMENTAL ENTITY OPERATING A COLLECTING INSTITUTION SHALL  
21 ESTABLISH A COLLECTION RESERVE FUND. PROCEEDS RECEIVED FROM THE SALE OF  
22 A DISPOSED ITEM SHALL BE USED TO PAY OFF ANY REMAINING DEBT INCURRED IN  
23 THE PURCHASE OF THE DEACCESSIONED ITEM THAT WAS SOLD. ANY MONEYS REMAIN-  
24 ING AFTER THE PAYMENT OF SUCH DEBT SHALL BE PAID INTO THE COLLECTION  
25 RESERVE FUND AND SHALL BE DEPOSITED AND SECURED IN THE MANNER PROVIDED  
26 BY SECTION TEN OF THE GENERAL MUNICIPAL LAW. THE GOVERNMENTAL COLLECTING  
27 INSTITUTION MAY USE MONEYS FROM THE COLLECTION RESERVE FUND ONLY FOR THE  
28 PURPOSES AUTHORIZED IN PARAGRAPH (A) OF THIS SUBDIVISION.

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

31 S 3. The board of regents is hereby authorized and directed, in  
32 consultation with groups and individuals who have expertise in the  
33 field, to consider and make recommendations concerning whether collect-  
34 ing institutions should include buildings in their collection. Such  
35 study shall include, but not be limited to:

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

38 (b) Criteria for determining when it is permissible to include a  
39 building in a collecting institution's collection; and

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

43 The regents shall submit a copy of the study to the governor, the  
44 temporary president of the senate, the speaker of the assembly, the  
45 chairperson of the senate higher education committee and the chairperson  
46 of the assembly higher education committee no later than six months from  
47 the effective date of this act.

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

50 (A) PROCEEDS FROM THE DISPOSAL OF AN ITEM OR ITEMS FROM A COLLECTING  
51 INSTITUTION'S COLLECTION MAY BE USED FOR THE ACQUISITION OF ANOTHER ITEM  
52 OR ITEMS FOR THE COLLECTING INSTITUTION'S COLLECTION AND/OR FOR THE  
53 PRESERVATION, PROTECTION OR CARE OF AN ITEM OR ITEMS IN THE COLLECTION.  
54 IN NO EVENT, HOWEVER, SHALL PROCEEDS DERIVED FROM THE DISPOSAL OF AN  
55 ITEM OR ITEMS FROM A COLLECTING INSTITUTION'S COLLECTION BE USED FOR  
56 TRADITIONAL AND CUSTOMARY OPERATING EXPENSES. NOTHING IN THIS SECTION

1 SHALL LIMIT THE ABILITY OF A COLLECTING INSTITUTION TO SET MORE RESTRIC-  
2 TIVE POLICIES RELATING TO THE USE OF PROCEEDS FROM A DISPOSED ITEM.

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

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

14 S 6. This act shall take effect immediately.