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

3957

2011-2012 Regular Sessions

I N A S S E M B L Y

January 31, 2011

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 ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. Legislative findings. The legislature hereby finds and determines that the state of New York has the finest collecting institutions in the world, giving the people of the state and visitors an unequaled opportunity to experience the world's cultural, artistic, historical, natural history and scientific heritage. These collecting institutions exist across the state, range in size from the smallest to the largest institutions in the world, and are all creatures of state government. Some are directly chartered by the legislature and some by the board of regents, but all are subject to the public interest as set forth in law, regulation, charter requirement and sound collecting institution practice as also set forth by collecting institutions associations and accreditation organizations. This act is intended to assure and enhance the continuing interest of collecting institutions in abiding by and protecting the public interest.

The legislature further finds and determines that there is a need for clarification and standards with respect to the ways collecting institutions acquire, hold and dispose of property, especially property that is part of their collections. The need for such improvement in state policy and practice is a long-standing concern, and has been highlighted by the recent and widely discussed increase in financial pressure on cultural institutions. The legislature notes attempts in this state and elsewhere to monetize collections and the asserted use of those monies 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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legislature further finds and determines that such practices are inconsistent with the interest of the people of the state, are inconsistent with requirements of governing documents, accreditation standards, and accepted collecting institution practices, and, if unchecked, will permanently endanger the integrity and existence of collecting institution collections handed to us by earlier generations as a sacred, cultural, ethical and public trust.

The legislature therefore finds and declares that the requirements of this law are necessary to protect the cultural, artistic, historical and scientific heritage of the state, and the public interest, are consistent with long-standing professional standards set forth by the collecting institution community and are consistent with the statutory and constitutional responsibilities of the legislature and the board of regents.

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

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

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

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

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

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

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

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

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

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

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

(I) "REFINEMENT" MEANS CHANGING THE ITEMS IN A COLLECTING INSTITUTION'S COLLECTION IN ORDER TO FULFILL ITS MISSION STATEMENT AND COLLECTIONS MANAGEMENT POLICY.

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

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

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

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

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

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

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

(A) THE ITEM IS INCONSISTENT WITH THE MISSION OF THE COLLECTING INSTITUTION AS SET FORTH IN ITS MISSION STATEMENT;

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

(C) THE ITEM IS REDUNDANT;

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

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

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

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

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

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

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

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

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

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

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

(a) The reasons for the inclusion of a building in a collecting institution's collection;

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

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

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

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

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

SHALL LIMIT THE ABILITY OF A COLLECTING INSTITUTION TO SET MORE RESTRICTIVE POLICIES RELATING TO THE USE OF PROCEEDS FROM A DISPOSED ITEM.

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

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

S 6. This act shall take effect immediately.