

# STATE OF NEW YORK

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3302

2017-2018 Regular Sessions

## IN ASSEMBLY

January 27, 2017

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Introduced by M. of A. ENGLEBRIGHT, TITONE, JAFFEE, ZEBROWSKI -- Multi-Sponsored by -- M. of A. RAIA -- 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 subdivision 5 of section 233-aa 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:

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

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

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

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

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

18 § 233-aaa. Accession and deaccession of property. 1. For the purposes  
19 of this article the following terms shall have the following meanings:

20 (a) "Collecting institution" means a museum or other cultural or  
21 educational institution that is operated by a governmental entity,  
22 education corporation, not-for-profit corporation or charitable trust  
23 and owns or holds collections, or has collecting as a stated purpose in  
24 its charter, certificate of incorporation or other organizing documents,  
25 or intends to own or hold collections.

26 (b) "Accessioning" means the placement of an item into a collecting  
27 institution's collection and on its collection register following proce-  
28 dures that are set forth in the collecting institution's collection  
29 management policy and mission statement.

30 (c) "Deaccessioning" means the removal of an item from a collecting  
31 institution's collection and its collection register following proce-  
32 dures that are set forth in the collecting institution's collection  
33 management policy and consistent with its mission statement.

34 (d) "Disposal" means the removal of an item from a collecting insti-  
35 tution's ownership by means of its sale, destruction, transfer, lease,  
36 gift or any other means.

37 (e) "Mission statement" means a statement approved by the collecting  
38 institution's governing body, which is modeled on, derived from and  
39 consistent with the collecting institution's corporate purposes as set  
40 forth in its charter, certificate of incorporation or other organizing  
41 document that identifies its purposes, benefits, activities and prac-  
42 tices.

43 (f) "Collection management policy" means a statement approved by the  
44 collecting institution's governing body and administered by its board,  
45 officers, employees and consultants which includes all policies and  
46 practices related to the preservation, accessibility and use of the  
47 collecting institution's collections and associated data, including loan  
48 management, collection growth and refinement; discharge of the public  
49 trust with respect to collections; methods of accessioning, deaccession-  
50 ing and disposal; planning and establishing collection priorities;  
51 obtaining, allocating and managing resources, and coordinating  
52 collection processes with the needs of curation, preservation and  
53 collection use; and a public register of accessioned items, which is  
54 modeled on, derived from and consistent with the collecting insti-  
55 tution's mission statement.

1 (g) "Collection" means the tangible or intangible things owned and  
2 accessioned by a collecting institution, including things that are  
3 generated by video, computer or similar means of projection and display,  
4 including concepts, that have intrinsic historical, artistic, cultural,  
5 scientific, natural history or other value.

6 (h) "Item" means an individual element of a collection.

7 (i) "Refinement" means changing the items in a collecting insti-  
8 tution's collection in order to fulfill its mission statement and  
9 collections management policy.

10 2. Each collecting institution shall develop, adopt and publish a  
11 collection management policy and a mission statement. Each collecting  
12 institution shall be bound by its collection management policy and its  
13 mission statement.

14 3. A collecting institution must accession all items in its possession  
15 that are consistent with its mission statement and collection management  
16 policy.

17 4. Each collecting institution shall publish a register of items in  
18 its collection. Such register shall be published within three years of  
19 the effective date of this section. The board of regents may extend the  
20 deadline after good cause has been shown. Notwithstanding the foregoing,  
21 as of the effective date of this section, all collecting institutions  
22 shall publish a register of newly accessioned or deaccessioned items.  
23 Any regulations promulgated by the regents shall include reasonable  
24 standards and requirements for such register which shall include the use  
25 of classes of items where the individual listing of items would be  
26 burdensome.

27 5. No collecting institution may dispose of an item or items in its  
28 collection except as set forth in this section and in its mission state-  
29 ment and collections management policy and not until the item or items  
30 have been deaccessioned.

31 6. Proceeds from disposal of an item shall only be used for purposes  
32 set forth in this section.

33 7. No item in a collecting institution's collection shall be used as  
34 collateral or be capitalized. Nothing in this section shall affect any  
35 collateralization or capitalization agreement, entered into by a  
36 collecting institution in existence for over seventy-five years and  
37 whose certificate of incorporation, as amended, has been filed with the  
38 secretary of state, that is already in effect or prevent items pledged  
39 as collateral or capitalized on the effective date of this section to  
40 continue to be used as collateral or capitalized at any time in the  
41 future providing that the items remain in the possession of the collect-  
42 ing institution except that nothing in this subdivision shall impair a  
43 lender's rights under a collateralization agreement to foreclose on the  
44 collateral under the terms of the agreement. The existence of any colla-  
45 teralization or capitalization agreement shall be disclosed to the  
46 department.

47 8. A collecting institution may deaccession an item in its collection  
48 only if one or more of the following criteria have been met:

49 (a) the item is inconsistent with the mission of the collecting insti-  
50 tution as set forth in its mission statement;

51 (b) the item has failed to retain its identity;

52 (c) the item is redundant;

53 (d) the item's preservation and conservation needs are beyond the  
54 capacity of the collecting institution to provide;

55 (e) the item is deaccessioned to accomplish refinement of collections  
56 as required by and/or stated in its collection management policy;

1 (f) it has been established that the item is inauthentic;

2 (g) the collecting institution is repatriating the item or returning  
3 the item to its rightful owner;

4 (h) the collecting institution is returning the item to the donor, or  
5 the donor's heirs or assigns, to fulfill donor restrictions relating to  
6 the item which the collecting institution is no longer able to meet; or

7 (i) the item presents a hazard to people or other collection items.

8 9. The regents is directed to create a statewide register available on  
9 the internet for the purposes of collecting and providing public infor-  
10 mation about deaccessioning, which shall include the ability of a  
11 collecting institution to list an item for actual or potential deacces-  
12 sioning.

13 10. (a) Proceeds from the disposal of an item or items may be used for  
14 the acquisition of another item or items for the collection and/or for  
15 the preservation, protection or care of an item or items in the  
16 collection. In no event, however, shall proceeds derived from the  
17 disposal of an item or items from a collection be used for traditional  
18 and customary operating expenses. Nothing in this section shall limit  
19 the ability of a collecting institution to set more restrictive policies  
20 relating to the use of proceeds from a disposed item.

21 (b) A governmental entity operating a collecting institution shall  
22 establish a collection reserve fund. Proceeds received from the sale of  
23 a disposed item shall be used to pay off any remaining debt incurred in  
24 the purchase of the deaccessioned item that was sold. Any moneys remain-  
25 ing after the payment of such debt shall be paid into the collection  
26 reserve fund and shall be deposited and secured in the manner provided  
27 by section ten of the general municipal law. The governmental collecting  
28 institution may use moneys from the collection reserve fund only for the  
29 purposes authorized in paragraph (a) of this subdivision.

30 11. The regents shall adopt rules or regulations to implement the  
31 provisions of this section.

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

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

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

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

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

49 § 4. Section 233-a of the education law is amended by adding a new  
50 subdivision 5 to read as follows:

51 5. Proceeds from the disposal of an item or items from a collecting  
52 institution's collection may be used for the acquisition of another item  
53 or items for the collecting institution's collection and/or for the  
54 preservation, protection or care of an item or items in the collection.  
55 In no event, however, shall proceeds derived from the disposal of an  
56 item or items from a collecting institution's collection be used for

1 traditional and customary operating expenses. Nothing in this section  
2 shall limit the ability of a collecting institution to set more restric-  
3 tive policies relating to the use of proceeds from a disposed item.

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

6 5. Proceeds from the disposal of an item or items from a collecting  
7 institution's collection may be used for the acquisition of another item  
8 or items for the collecting institution's collection and/or for the  
9 preservation, protection or care of an item or items in the collection.  
10 In no event, however, shall proceeds derived from the disposal of an  
11 item or items from a collecting institution's collection be used for  
12 traditional and customary operating expenses. Nothing in this section  
13 shall limit the ability of a collecting institution to set more restric-  
14 tive policies relating to the use of proceeds from a disposed item.

15 § 6. This act shall take effect immediately.