



THE STATE EDUCATION DEPARTMENT / THE UNIVERSITY OF THE STATE OF NEW YORK / ALBANY, NY 12234

TO: The Honorable the Members of the Board of Regents
Jeffrey W. Cannell

FROM:

SUBJECT: Emergency Amendment of Regents Rule §3.27, Relating to Museum Collections Management Policies

DATE: July 7, 2010

STRATEGIC GOAL: Goals 2 and 4

AUTHORIZATION(S):

Summary

Issue for Decision (Consent Agenda)

Should the Regents adopt as an eleventh emergency action, effective for 60 days, the amendment of §3.27 of the Rules of the Board of Regents, relating to museum collections management policies?

Reason for Consideration

Implementation of Regents policy.

Proposed Handling

The proposed amendment will be presented to the Full Board for emergency action at the July Regents meeting.

Procedural History

The proposed amendment was discussed by the Cultural Education Committee and adopted by the Full Board as an emergency action at the December 2008 Regents meeting, effective December 19, 2008, and was readopted by emergency action at the March, April, June, July, October and December 2009 and the February, March and May 2010 Regents meetings.

Background Information

The proposed amendment has been recommended by the State Education Department and State Museum management to protect collections held by museums and historical societies. Regents Rule §3.27 provides standards for chartered museums and historical societies. Sections 3.27 and 3.30 were first promulgated effective March 1971, and the Regents added a collections management policy requirement effective July 1998. The March 2006 amendment greatly expanded the standards by providing increased oversight for collections and resources held in the public trust.

In the current financial downturn, museums face deficits that threaten the ownership or integrity of their collections. Museum constituents have asked for specific criteria and guidance relating to deaccessioning and use of collections proceeds. We believe current Regents Rules on collections need to be more explicit on acceptable criteria for deaccessioning collections. In addition, we seek to remove the option to use collections proceeds for improving a historic structure since such use of funds has been criticized and widely debated. Even if a museum fails, we want to keep collections in the public trust and not lose them to debt or insolvency.

The proposed amendment would apply to chartered museums and historical societies authorized to own and hold collections under Rule §3.27, and would:

- Enumerate four specific criteria under which an institution may deaccession an item or material in its collection.
- Remove the option allowing an institution to designate a structure as a collections item; but keep intact any such designation made by vote of a board of trustees prior to December 19, 2008.
- Specify that no proceeds from deaccessioning may be used for payment of outstanding debt or for capital expenses, except to preserve, protect or care for an historic building previously designated as part of the institution's collection, as above.

In November and December 2008 we informed constituents of the original emergency amendment through a mailing with cover memo, announcements on web

sites, and copies sent to listservs and electronic mailing lists. We received about 30 written comments which we provided to the Regents prior to the December vote.

State Education Department staff continue to work with the Legislature and with museum constituents to develop revised standards for museum deaccessioning. The Department participated in a January 14, 2010, roundtable discussion in New York City organized by the New York State Assembly. However, a consensus has not been reached with respect to the revised standards, and the Department believes it is necessary to continue the emergency rule that has remained in effect since December 19, 2008.

The proposed amendment is being presented for adoption as an emergency action to ensure that the emergency rule remains continuously in effect until it can be presented for adoption as a permanent rule. A Statement of Facts and Circumstances Which Necessitate Emergency Action is attached. Supporting materials are available upon request from the Secretary to the Board of Regents. A Notice of Emergency Adoption and Proposed Rule Making was published in the State Register on June 30, 2010.

Recommendation

It is recommended that the Board of Regents take the following action:

VOTED: That paragraph (7) of subdivision (a), and paragraphs (6) and (7) of subdivision (c), of section 3.27 of the Rules of the Board of Regents be amended, as submitted, effective August 10, 2010, as an emergency action to expire and be deemed repealed effective October 8, 2010, upon a finding by the Board of Regents that such action is necessary for the preservation of the general welfare in order to protect the public's interest in collections held by a museum or historical society by enumerating the specific criteria under which an institution may deaccession an item or material in its collection, remove the option allowing an institution to designate a structure as a collections item but keep intact any such designation made by vote of a board of trustees prior to December 19, 2008, and specify that no proceeds from deaccessioning may be used for capital expenses, except to preserve, protect or care for an historic building previously designated as part of the institution's collection, as above. Emergency action is also necessary to ensure that the emergency rule remains continuously in effect until it can be adopted and made effective as a permanent rule.

Timetable for Implementation

The May emergency action will expire on August 9, 2010. If adopted by the Board of Regents at the July meeting, this emergency action will become effective on August 10, 2010. It is anticipated that the proposed revised rule will be presented for permanent adoption at a subsequent Regents meeting, after publication of a new Notice of Proposed Rule Making in the State Register and expiration of the 45-day public comment period prescribed in the State Administrative Procedure Act.

PROPOSED AMENDMENT OF SECTION 3.27 OF THE RULES OF THE BOARD OF REGENTS PURSUANT TO EDUCATION LAW SECTIONS 101, 207, 215, 216, 217 AND 233-aa AND CHAPTER 220 OF THE LAWS OF 2008, RELATING TO MUSEUM COLLECTIONS MANAGEMENT

STATEMENT OF FACTS AND CIRCUMSTANCES WHICH NECESSITATE EMERGENCY ACTION

The proposed amendment is necessary to implement Regents policy to protect the public's interest in collections held by chartered museums and historical societies.

Specifically, the proposed amendment clarifies restrictions on the deaccessioning of items and materials in an institution's collections, consistent with generally accepted professional and ethical standards within the museum and historical society communities. An institution may deaccession an item or material in its collection only where one or more of the following criteria have been met:

- (1) the item or material is not relevant to the mission of the institution;
- (2) the item or material has failed to retain its identity, or has been lost or stolen and has not been recovered;
- (3) the item or material duplicates other items or material in the collection of the institution and is not necessary for research or educational purposes; and/or
- (4) the institution is unable to conserve the item or material in a responsible manner.

In addition to the existing prohibition against using proceeds from a deaccessioning for operating expenses, the proposed amendment would extend such prohibition to also include the use of such proceeds for the payment of outstanding debt

and for the payment of capital expenses other than those incurred to preserve, protect or care for an historic building which has been designated part of its collections.

The proposed amendment also removes the option in section 3.27 allowing an institution to designate a structure as a collections item; but keeps intact any such designation made by vote of a board of trustees prior to December 19, 2008. If such designation was made, an institution may use proceeds from deaccessioning for capital expenses, to preserve, protect or care for an historic building designated as part of the institution's collection.

In the current financial downturn, collections held by museums and historical societies could be threatened by inappropriate deaccessioning by sale, disposal or transfer. Currently, some 37 institutions in New York in 2006 reported deficits of \$100,000 or more. The Department is concerned that, in the absence of an express prohibition in Regents rule section 3.27, museums and historical societies in financial distress will deaccession items or materials for purposes of paying their outstanding debt. Consistent with generally accepted professional and ethical standards within the museum and historical society communities, the proposed amendment would expressly prohibit proceeds from deaccessioning from being used for the payment of outstanding debt or capital expenses. The proposed amendment would also restrict when an institution may deaccession its collections to the instances listed in (1) through (4) above. This specific language was added in response to museums which sought clarity on what constitutes proper and acceptable grounds for deaccessioning.

The proposed amendment was adopted as an emergency rule at the December 2008 Regents meeting, and readopted as an emergency rule at the March, April, June,

July, October and December 2009 and the February, March and May 2010 Regents meetings. A Notice of Emergency Adoption and Proposed Rule Making was published in the State Register on January 7, 2009. Notices of Revised Rule Making were published in the State Register on August 26, 2009 and January 20, 2010. The Notice of Emergency Adoption and Proposed Rule Making expired on April 7, 2010. A new Notice of Emergency Adoption and Proposed Rule Making has been published in the June 30, 2010 State Register with this Statement.

The proposed amendment is consistent with generally accepted professional and ethical standards within the museum and historical society communities. State Education Department staff continue to work with the Legislature and with museum constituents to develop revised standards for museum deaccessioning. The Department participated in a January 14, 2010, roundtable discussion in New York City organized by the New York State Assembly. However, a consensus has not been reached with respect to the revised standards, and the Department believes it is necessary to continue the emergency rule that has remained in effect since December 19, 2008.

Pursuant to State Administration Procedure Act § 202(1)(a), a rule may not be adopted until after 45-days from publication of a Notice of Proposed Rule Making in the State Register. The Notice of Proposed Rule Making was published in the State Register on June 30, 2010 and the 45-day period expires on August 16, 2010. However, the emergency rule adopted at the May Regents meeting is only effective for 60 days and will expire on August 9, 2010. No Regents meetings are scheduled in August and the next scheduled Regents meeting after the July Regents meeting is

September 13-14, 2010. If the rule were to lapse, collections held by museums and historical societies could be threatened by inappropriate deaccessioning by sale, disposal or transfer. To avoid the adverse effects of a lapse in the emergency rule, another emergency action is necessary at the July Regents meeting to readopt the rule, effective August 10, 2010 so that it may remain continuously in effect until it can be adopted and made effective as a permanent rule.

Emergency action to adopt the proposed amendment is necessary for the preservation of the general welfare in order to protect the public's interest in collections held by a museum or historical society by enumerating the specific criteria under which an institution may deaccession an item or material in its collection, remove the option allowing an institution to designate a structure as a collections item but keep intact any such designation made by vote of a board of trustees prior to December 19, 2008, and specify that no proceeds from deaccessioning may be used for capital expenses, except to preserve, protect or care for an historic building previously designated as part of the institution's collection, as above. Emergency action is also necessary to ensure that the emergency rule remains continuously in effect until it can be adopted and made effective as a permanent rule.

It is anticipated that the emergency rule will be presented for permanent adoption at a subsequent Regents meeting, after publication of a new Notice of Proposed Rule Making in the State Register and expiration of the 45-day public comment period prescribed in the State Administrative Procedure Act.

AMENDMENT OF THE RULES OF THE BOARD OF REGENTS

Pursuant to sections 101, 207, 215, 216, 217 and 233-aa of the Education Law and Chapter 220 of the Laws of 2008

1. Paragraph (7) of subdivision (a) of section 3.27 of the Rules of the Board of Regents is amended, effective August 10, 2010, to read as follows, provided that such amendment shall expire and be deemed repealed October 8, 2010:

(7) Collection means one or more original tangible objects, artifacts, records or specimens, including art generated by video, computer or similar means of projection and display, that have intrinsic historical, artistic, cultural, scientific, natural history or other value that share like characteristics or a common base of association and are accessioned; for purposes of this section, historic structures owned by an institution shall be considered as part of a collection only when so designated by the board of trustees of the institution by vote conducted on or before December 19, 2008;

2. Paragraphs (6) and (7) of subdivision (c) of section 3.27 of the Rules of the Board of Regents are amended, effective August 10, 2010, to read as follows, provided that such amendment shall expire and be deemed repealed October 8, 2010:

(6) Collections Care and Management. The institution shall:

(i) own, maintain and/or exhibit original tangible objects, artifacts, records, specimens, buildings, archeological remains, properties, lands and/or other tangible and intrinsically valuable resources that are appropriate to its mission;

(ii) ensure that the acquisition and deaccessioning of its collection is consistent with its corporate purposes and mission statement, including that deaccessioning of

items or material in its collection is limited to the circumstances prescribed in paragraph (7) of this subdivision;

(iii) have a written collections management policy providing clear standards to guide institutional decisions regarding the collection, that is in regular use, available to the public upon request, filed with the commissioner for inspection by anyone wishing to examine it; and which, at a minimum, satisfactorily addresses the following subject areas:

(a) acquisition. The criteria and processes used for determining what items are added to the collections;

(b) loans. The criteria and processes used for borrowing items owned by other institutions and individuals, and for lending items from the collections;

(c) preservation. A statement of intent to ensure the adequate care and preservation of collections;

(d) access. A statement indicating intent to allow reasonable access to the collections by persons with legitimate reasons to access them; and

(e) deaccession. The criteria and process (including levels of permission) used for determining what items are to be removed from the collections, which shall be consistent with paragraph (7) of this subdivision, and a statement limiting the use of any funds derived therefrom in accordance with subparagraph [(vii)] (vi) of this paragraph;

(iv) ensure that collections or any individual part thereof and the proceeds derived therefrom shall not be used as collateral for a loan;

(v) ensure that collections shall not be capitalized; and

(vi) ensure that proceeds derived from the deaccessioning of any property from the institution's collection be restricted in a separate fund to be used only for the acquisition, preservation, protection or care of collections. In no event shall proceeds derived from the deaccessioning of any property from the collection be used for operating expenses, for the payment of outstanding debt, or for capital expenses other than such expenses incurred to preserve, protect or care for an historic building which has been designated part of its collections in accordance with paragraph (7) of subdivision (a) of this section, or for any purposes other than the acquisition, preservation, protection or care of collections.

(7) Deaccessioning of collections. An institution may deaccession an item or material in its collection only where one or more of the following criteria have been met:

(i) the item or material is not relevant to the mission of the institution;

(ii) the item or material has failed to retain its identity, or has been lost or stolen and has not been recovered;

(iii) the item or material duplicates other items or material in the collection of the institution and is not necessary for research or educational purposes; and/or

(iv) the institution is unable to conserve the item or material in a responsible manner.

(8) Education and Interpretation. The institution shall offer programmatic accommodation for individuals with disabilities to the extent required by law.