




TO: The Honorable Members of the Board of Regents
FROM: Daniel Morton-Bentley 
SUBJECT: Proposed Amendment of Sections 3.23 and 3.26 of the Rules of the Board of Regents Relating to Fees for Certificates of Existence and Copies of Charter Actions and Consent to Incorporation

DATE: August 31, 2023

AUTHORIZATION(S):



SUMMARY

Issue for Discussion

Should the Board of Regents adopt the proposed amendment of sections 3.23 and 3.26 of the Rules of the Board of Regents relating to fees for certificates of existence and copies of charter actions and consent to incorporation?

Reason(s) for Consideration

Review of Policy.

Proposed Handling

The proposed amendment is presented to the Full Board for discussion at the September 2023 Regents meeting. A copy of the proposed rule is included (Attachment A).

Procedural History

A Notice of Proposed Rule Making will be published in the State Register on September 27, 2023, for a 60-day public comment period. Supporting materials are available upon request to the Secretary of the Board of Regents.

Background Information

Fees for Certificates of Existence & Copies of Charter Actions:

The Department proposes to amend section 3.23 of the Rules of the Board of Regents to require a \$10 fee for certificates of existence and for certified copies of charter actions taken by the Board of Regents. The number of requests for certificates

of existence has consistently increased over time; in addition, education corporations often request multiple copies of such certificates. Similarly, the number of requests for certified copies of charter actions taken by the Board of Regents has also increased over time. These fees will help offset the cost of staff time and supplies in generating these requested certificates and certified copies. The Department believes that this cost is reasonable; by comparison, the New York State Department of State charges \$25 dollars for similar certification.

Consent to Incorporation:

The Department also proposes to amend section 3.26 of the Rules of the Board of Regents regarding consents to incorporation pursuant to Education Law §216. This provision has not been amended since it was enacted in 1971. The proposed rule updates such section to reflect that the Board of Regents may consent to the formation of companies and corporations under the Limited Liability Company Law and the Not-for-Profit Corporation Law in addition to the Business Corporation Law. The proposed amendment includes provisions for the formation of domestic business corporations, foreign (business or nonprofit) corporations, domestic limited liability corporations, foreign limited liability corporations, and domestic not-for profit corporations.

Related Regents Items

Not applicable.

Recommendation

Not applicable.

Timetable for Implementation

It is anticipated that the proposed amendment will be presented for permanent adoption at the January 2024 Regents meeting, after publication of the proposed amendment in the State Register and expiration of the 60-day public comment period required under the State Administrative Procedure Act. If adopted at the January meeting, the proposed amendment will become effective on January 24, 2023.

AMENDMENT OF THE RULES OF THE BOARD OF REGENTS

Pursuant to Education Law sections 207 and 216.

1. Section 3.23 of the Rules of the Board of Regents is amended to read as follows:

Section 3.23. Application and fees

An educational institution desiring incorporation or admission to the university or registration by the department shall file application giving the information required in such form and manner as shall be prescribed by the commissioner. The fee for a provisional charter shall be \$100; for a Regents certificate of incorporation, \$100; for an order of consolidation, \$100; for an extension of a provisional charter, \$60; for an absolute charter, \$60; for an amendment of a charter, \$60; [and] for an order dissolving a Regents corporation, \$60; for a certificate of existence shall be \$10, and for certified copies of charter actions taken by the Board of Regents shall be \$10. The fee, which shall accompany the filing of a request for the commissioner's consent to the filing with the Secretary of State of a certificate of incorporation, a certificate of amendment of a certificate of incorporation, an application for authority to do business in New York, a certificate of dissolution of a corporation, or a certificate of merger of a corporation, or for a waiver of the need to secure such consents, shall be \$20 for business corporations and \$10 for not-for-profit corporations.

2. Section 3.26 of the Rules of the Board of Regents is amended to read as follows:

Section 3.26. Consent to incorporation. Education Law, § 216

The commissioner, pursuant to Education Law section 216, may consent to the formation of a corporation or company under the Business Corporation Law, Limited Liability Company Law, and the Not-for-Profit Corporation Law and to the amendment of the certificate of incorporation, application for authority, or articles of organization of [a corporation] an entity so formed, whose purposes include the operation of a school or schools offering instruction in any of the grades 1 through 12, including instruction for the handicapped, or offering instruction at the kindergarten or prekindergarten level, if the proposed certificate of incorporation, application for authority, or articles of organization or amendment thereof specifically states that:

(a) Domestic business corporation.

(1) The corporation and any school or educational program which it may conduct shall be subject to and comply with all of the statutory provisions, rules of the Regents and regulations of the commissioner which would be applicable to a corporation created by the Regents pursuant to section 216 of the Education Law for the same purpose or purposes.

[[b)] (2) Within 30 days after receipt by the corporation of an order of the Board of Regents directing such action, the holders of a majority of all the outstanding shares of the corporation entitled to vote upon an amendment of the certificate of incorporation will cause to be filed with the Secretary of State a certificate of amendment to the certificate of incorporation deleting therefrom all provisions authorizing the corporation to operate such a school or schools, and changing the corporate name, if necessary, to delete therefrom any word or words which indicate that the corporation operates such a school or schools. Such an order of the Board of Regents shall be made only upon the same grounds and after the same procedures as are applicable to the revocation of a

charter granted by the Regents pursuant to section 216 of the Education Law for the purpose of authorizing the corporation thereby created to operate a school or schools.

(b) Foreign (business or nonprofit) corporation.

(1) The corporation and any school or educational program which it may conduct shall be subject to and comply with all of the statutory provisions, Rules of the Regents and Regulations of the Commissioner which would be applicable to a corporation created by the Regents pursuant to section 216 of the Education Law for the same purpose or purposes.

(2) Within 30 days after receipt by the corporation of an order by the Board of Regents directing such action, the corporation shall cause to be filed with the New York Secretary of State either a certificate of surrender of authority, or a certificate of amendment of the application for authority deleting therefrom all provisions authorizing the corporation to operate such a school or educational program, and changing the corporate name, if necessary, to delete therefrom any word or words which indicate that the corporation operates such a school or educational program. Such an order of the Board of Regents shall be made only upon the same grounds and after the same procedures as are applicable to the revocation of a charter granted by the Regents pursuant to section 216 of the Education Law for the purpose of authorizing the corporation thereby created to operate a school or educational program.

(c) Domestic limited liability company.

(1) The company and any school or educational programs which it may conduct shall be subject to and comply with all of the statutory provisions, Rules of the Regents and Regulations of the Commissioner which would be applicable to a corporation

created by the Regents pursuant to Section 216 of the Education Law for the same purpose or purposes.

(2) Within 30 days after receipt by the company of an order by the Board of Regents directing such action, the company shall file with the Secretary of State a certificate of amendment to the articles of organization deleting therefrom all provisions authorizing the company to operate such a school or educational program, and changing the company name, if necessary, to delete therefrom any word or words which indicate that the company operates such a school or educational program. Such an order of the Board of Regents shall be made only upon the same grounds and after the same procedures as are applicable to the revocation of a charter granted by the Regents pursuant to section 216 of the Education Law for the purpose of authorizing the corporation thereby created to operate a school or educational program.

(d) Foreign limited liability company.

(1) The company and any school or educational programs which it may conduct shall be subject to and comply with all of the statutory provisions, Rules of the Regents and Regulations of the Commissioner which would be applicable to a corporation created by the Regents pursuant to Section 216 of the Education Law for the same purpose or purposes.

(2) Within 30 days after receipt by the company of an order by the Board of Regents directing such action, the company shall file with the New York Secretary of State either a certificate of surrender of authority, or a certificate of amendment of the application for authority deleting therefrom all provisions authorizing the company to operate such a school or educational program, and changing the company name, if necessary, to delete therefrom any word or words which indicate that the company

operates such a school or educational program. Such an order of the Board of Regents shall be made only upon the same grounds and after the same procedures as are applicable to the revocation of a charter granted by the Regents pursuant to section 216 of the Education Law for the purpose of authorizing the corporation thereby created to operate a school or educational program.

(e) Domestic not-for-profit corporation.

(1) The corporation and any school or educational program which it may conduct shall be subject to and comply with all of the statutory provisions, Rules of the Regents and Regulations of the Commissioner which would be applicable to a corporation created by the Regents pursuant to section 216 of the Education Law for the same purpose or purposes.

(2) Within 30 days after receipt by the corporation of an order by the Board of Regents directing such action, the corporation shall cause to be filed with the Secretary of State a certificate of amendment to the certificate of incorporation deleting therefrom all provisions authorizing the corporation to operate such a school or educational program, and changing the corporate name, if necessary, to delete therefrom any word or words which indicate that the corporation operates such a school or educational program. Such an order of the Board of Regents shall be made only upon the same grounds and after the same procedures as are applicable to the revocation of a charter granted by the Regents pursuant to section 216 of the Education Law for the purpose of authorizing the corporation thereby created to operate a school or educational program.