

STATE OF NEW YORK

6257

2021-2022 Regular Sessions

IN SENATE

April 19, 2021

Introduced by Sen. COMRIE -- read twice and ordered printed, and when printed to be committed to the Committee on Corporations, Authorities and Commissions

AN ACT to amend the not-for-profit corporation law, in relation to leasing cemetery lands

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 Section 1. Legislative findings and declarations. The legislature
2 finds and declares that the state has a vital interest in the public
3 service that public cemeteries provide and in their viability as not-
4 for-profit entities. Many cemeteries face falling demand for traditional
5 burial services and other financial pressures. It is therefore necessary
6 for the state to provide greater flexibility for cemeteries to generate
7 income to prevent their operational failure and abandonment to local
8 governments and impacts on the state fiscal plan, while simultaneously
9 protecting the interests of cemetery lot owners and visitors. It is in
10 the public interest that cemeteries with surplus land are able to
11 receive income from such land for a period of time without altering the
12 purpose of public cemeteries or negatively impacting the operation of
13 the cemetery and the use of cemetery land. The following provisions are
14 enacted to grant such cemeteries the ability to lease a portion of their
15 land and use the income for the maintenance and preservation of the
16 cemetery, to ensure that through leasing cemeteries themselves do not
17 engage in non-cemetery purposes.

18 § 2. The not-for-profit corporation law is amended by adding a new
19 section 1506-e to read as follows:

20 § 1506-e. Lease of cemetery lands.

21 (a) Except as set forth in subdivision (j) of this section, no ceme-
22 tery corporation shall lease any portion of its land without notice to
23 and approval of the cemetery board.

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

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(b) The application to the cemetery board for approval to lease cemetery land shall include the following requirements or information:

(1) Approval from the cemetery's lot owners or board of directors to lease the land proposed in such application;

(2) If the cemetery has any existing leases of land, such leases shall be disclosed on the application so the board can consider the impact of existing leases on cemetery operations;

(3) A statement showing the proposed lease was negotiated at arm's length for a fair market rent and shall contain all of the agreements between the parties. Where the proposed lease would be a related party transaction under this chapter, the cemetery shall disclose this fact and demonstrate compliance with restrictions related to such transactions, as set forth in section seven hundred fifteen of this chapter, and the cemetery board may require that the lease contain a clause by which the cemetery board may set reasonable reporting requirements that would disclose any financial relationship between the lessor and lessee related to the leased property;

(4) Evidence showing the initial lease term is not greater than forty-nine years and the cemetery corporation shall demonstrate that such a term will not interfere with land needed for burial purposes. Notwithstanding the provisions of this paragraph, the cemetery board may approve a lease with extensions of the initial term not to exceed ninety-nine years from the date of the initial lease, provided that the security shall be updated at year forty-nine and every twenty years afterward during the term of the lease and all extensions thereof, if applicable, and approved pursuant to subdivision (i) of this section;

(5) If the proposed lease involves land adjacent to cemetery operations;

(6) If the proposed lease requires the tenant to construct and maintain a physical or visual buffer approved by the cemetery board, which may be vegetative;

(7) How the proposed lease protects visitors to the cemetery;

(8) If proposed lease requires the tenant to be responsible for any and all taxes, assessments, and charges related to its occupancy and use of the land, whether imposed against the tenant or the cemetery corporation;

(9) If the proposed lease includes permission to construct any infrastructure, buildings or other structures, the application to the cemetery board shall provide for the removal of such infrastructure, buildings or other structures after the cemetery retakes possession of the land, unless the infrastructure, buildings or other structures are to be retained by the cemetery pursuant to subdivision (g) of this section;

(10) The proposed lease shall include an agreement to pay for the removal of any proposed infrastructure, buildings and structures, except any that are approved to be retained as set forth in subdivision (g) of this section, and return leased premises to the cemetery corporation in a condition suitable for cemetery use upon the expiration or termination of the lease and such agreement shall be secured by a fund, bond, letter of credit or other security sufficient to pay for such future removal. The application shall include a written description of the proposed funding mechanism for the establishment of a fund, written evidence of a bond, or other security to the cemetery board for payment of the cost of restoring the leased premises to a condition suitable for use for cemetery purposes at the end or earlier termination of the term of the lease, including but not limited to the cost of removing any and all buildings and structures that may then be located on the leased premises

1 and will not be retained. Any such bond shall be issued by an entity
2 authorized to do business in the state of New York, and any irrevocable
3 letter of credit or a certificate of deposit shall be from a New York
4 state or federally chartered bank, trust company, savings bank or
5 savings and loan association that is qualified to do business in the
6 state of New York and insured by the federal deposit insurance corpo-
7 ration;

8 (11) A statement that the land proposed to be leased shall not be used
9 for any activity that would be disruptive to cemetery operations or that
10 would have a significant impact on cemetery traffic. If the proposed use
11 or activity for the land may disturb normal and usual cemetery activ-
12 ities, the proposed lease and application shall include hour limits on
13 such use or activity;

14 (12) A statement that the proposed lease shall not include the manu-
15 facture or disposal of hazardous material or the use or storage of
16 hazardous material in violation of any law or otherwise create a signif-
17 icant risk of environmental harm to the cemetery property;

18 (13) If the proposed lease may permit assignment or sub-leases,
19 including sub-leasing and assignment of space on cell towers to communi-
20 cations providers, provided the original lease remains in effect and the
21 use remains the same.

22 (c) In addition to the application submission to the cemetery board,
23 no earlier than ten days prior to such submission, the cemetery corpo-
24 ration shall post notices in the immediate proximity of the land
25 proposed to be leased, the cemetery office, all entrances of the ceme-
26 tery and in a manner so as not to violate local zoning ordinances or to
27 create a traffic hazard. Each notice shall provide information written
28 in plain English concerning the proposed lease and, if the proposed
29 lease includes construction of new structures or buildings, include a
30 drawing, which shall be an accurate rendition of the proposed
31 construction. In addition, such notices shall state the telephone number
32 and address where comments may be received and the last date on which
33 such comments will be accepted. The last day to accept comments shall be
34 no earlier than sixty days following the date such notices are posted.

35 (d) The following uses are deemed to comply with paragraph eleven of
36 subdivision (b) of this section:

37 (1) Communications service facilities, also known as cell towers;

38 (2) Solar panels; and

39 (3) "Electric energy storage equipment," as defined in section four
40 hundred ninety-nine-aaaa of the real property tax law;

41 (e) For any lease involving related party transactions pursuant to
42 section seven hundred fifteen of this chapter, the cemetery board shall
43 set reasonable reporting requirements that would disclose any financial
44 relationship between the lessor and lessee related to the leased proper-
45 ty.

46 (f) Any material modification, alteration or expansion of the lease or
47 additions of any structures or buildings outside the scope of the prior
48 approval requires cemetery board approval.

49 (g) If the cemetery corporation intends that any infrastructure,
50 structure or buildings proposed under the lease be retained and used for
51 cemetery purposes after the lease terminates or expires, the application
52 to approve the lease shall also include an application for approval of
53 such infrastructure, structures or buildings as intended to be used by
54 the cemetery. The board shall render decision on the application for a
55 major alteration in conjunction with the decision on the application to
56 lease cemetery land. If that application is approved, such infrastruc-

1 ture, buildings or structures shall be excluded from the requirements of
2 paragraph ten of subdivision (b) of this section.

3 (h) The application shall include at least two written estimates of
4 the cost of removing the infrastructure, buildings and structures,
5 excluding retained infrastructure, associated structures and returning
6 the land to a condition suitable for burial purposes at the conclusion
7 of the lease.

8 (i) (1) The cemetery board shall approve the type and amount of the
9 security which shall be maintained in full force and effect on the
10 proposed leased property, in an amount not less than that which was
11 approved by the cemetery board, until: (i) the leased premises shall
12 have been restored to a condition suitable for use for cemetery purposes
13 at the end or earlier termination of the term of the lease; (ii) any and
14 all buildings and structures then located on the leased premises shall
15 have been removed; (iii) proof in form acceptable to the cemetery board
16 demonstrating that all costs of such restoration and removal work have
17 been paid in full and that no person or entity performing labor or
18 furnishing materials for such work has filed a notice of mechanic's lien
19 that shall have been delivered to the cemetery board, provided however
20 that a cemetery may contest such lien as long as such contest prevents
21 the foreclosure of a lien; and (iv) if applicable, each governmental
22 unit or agency that issued any permit for such restoration and removal
23 work shall have issued a certificate of compliance or other similar
24 instrument indicating that such work has been completed in a due and
25 proper manner. The parties directed to perform the restoration and
26 removal work contemplated by this subdivision and as approved by the
27 cemetery board shall not be limited by the amount of the bond, letter of
28 credit, or certificate of deposit or by any inability to recover all or
29 any part of such bond, letter of credit, or certificate of deposit from
30 the issuing surety, bank, trust company, savings bank, or savings and
31 loan association. Neither the cemetery board nor the department of state
32 shall be liable to the tenant, the cemetery, or any other person or
33 entity by reason of any determination or approval made under this para-
34 graph.

35 (2) Prior to the commencement of construction, the cemetery shall
36 submit proof to the cemetery board that such security in such amount is
37 in place.

38 (j) Leases for the following uses do not require cemetery board
39 approval:

40 (1) A lease or license to grow and harvest crops with a term less than
41 five years;

42 (2) A lease of a dwelling to the caretaker or other officer or employ-
43 ee of the cemetery that is actually used and occupied as that person's
44 residence; or

45 (3) A renewal or assignment of an existing lease of existing struc-
46 tures on land owned by the cemetery, not dedicated to cemetery purposes
47 and that was subject to a lease, provided that such purchase or acquisi-
48 tion was approved by a court or the cemetery board, if such renewal does
49 not change the scope of the existing lease.

50 (k) All lease payments and other consideration received by the ceme-
51 tery corporation, less the necessary expenses incurred, shall be depos-
52 ited into the permanent maintenance fund established by the cemetery
53 corporation pursuant to paragraph (a) of section fifteen hundred seven
54 of this article, except that upon a showing of a need to fund specific
55 projects, maintain and preserve, or expand current cemetery operations,
56 the cemetery board may permit any portion of the lease payments or other

1 consideration to be used for such purposes, with the remainder to be
2 deposited to the permanent maintenance fund.

3 § 3. Notwithstanding any provision of law to the contrary, a lease of
4 cemetery land that was entered into prior to the effective date of this
5 act shall continue under the terms and conditions and for the period of
6 time set forth in the lease as of such effective date, including any
7 right of renewal, unless the cemetery did not obtain cemetery board
8 approval.

9 § 4. This act shall take effect immediately.