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

7802--A

2013-2014 Regular Sessions

I N A S S E M B L Y

June 4, 2013

Introduced by M. of A. BRENNAN -- read once and referred to the Committee on Corporations, Authorities and Commissions -- recommitted to the Committee on Corporations, Authorities and Commissions in accordance with Assembly Rule 3, sec. 2 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the not-for-profit corporation law, in relation to cemetery trust funds

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. Subparagraph 2 of paragraph (a) of section 1507 of the not-for-profit corporation law, as amended by chapter 679 of the laws of 2004, is amended to read as follows:

(2) The permanent maintenance fund is hereby declared to be and shall be held by the corporation as a trust fund, for the purpose of maintaining and preserving the cemetery, including all lots, crypts, niches, plots, and parts thereof. The principal of such fund shall be invested in such securities as are permitted for the investment of trust funds by section 11-2.3 of the estates, powers and trusts law. The income in the form of interest and ordinary dividends therefrom shall be used solely for the maintenance and preservation of the cemetery grounds. In addition, the governing board of the corporation may appropriate for expenditure solely for the maintenance and preservation of the cemetery grounds a portion of the net appreciation, [realized (with respect to all assets) and unrealized (with respect only to readily marketable assets),] in the fair market value of the principal of the trust [in excess of its adjusted historic dollar value, as defined in this subparagraph], as is prudent under the standard established by [section seven hundred seventeen of this chapter (duty of directors and officers) and as limited by the maximum annual appropriation defined in this subparagraph. For the purposes of this subparagraph, the adjusted historic dollar value of the trust principal shall be the market value of the

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

LBD10878-02-4

principal three full calendar years prior to the effective date of the amendments made to this subparagraph, plus all subsequent additions thereto, minus all allowable deductions therefrom, adjusted by the rate of inflation as measured by the applicable consumer price index. The maximum annual appropriation shall be sixty percent of the average of the net appreciation in the fund for the immediately preceding three years, but only to the extent that it exceeds the adjusted historical dollar value of the fund in the current year. Cemetery corporations shall keep complete records of the adjusted historic dollar value of the permanent maintenance fund] ARTICLE FIVE-A OF THIS CHAPTER, THE PRUDENT MANAGEMENT OF INSTITUTIONAL FUNDS ACT. In the event that a cemetery corporation seeks to appropriate any percentage of its net appreciation in its permanent maintenance fund in accordance with this subparagraph, the cemetery corporation shall [send a notice] PROVIDE NOTICE of such proposed appropriation by certified mail to the cemetery board NOT LESS THAN SIXTY DAYS IN ADVANCE OF SUCH PROPOSED APPROPRIATION AND SHALL DISCLOSE SUCH APPROPRIATION AS PART OF AND IN ADDITION TO THEIR ANNUAL REPORTING REQUIREMENTS AS DEFINED IN SECTION FIFTEEN HUNDRED EIGHT OF THIS ARTICLE, setting forth the amount of funds to be appropriated for such expenditure and its effect on the permanent maintenance fund[, and certifying that such amount does not exceed the maximum annual appropriation defined in this subparagraph]. Such proposed appropriation shall become effective sixty days after receipt of such notice, unless the cemetery board within such sixty-day period notifies the cemetery corporation that the board objects to the proposed appropriation. Notwithstanding the foregoing provisions of this subparagraph, all principal of the permanent maintenance fund shall remain inviolate, except that, upon application to the supreme court in a district where a portion of the cemetery grounds is located, the court may make an order permitting the principal or a part thereof to be used for the purpose of current maintenance and preservation of the cemetery or otherwise. Such application may be made by the cemetery board on notice to the corporation or by the corporation on notice to the cemetery board. Unless the cemetery can clearly demonstrate that it lacks sufficient future revenue to make repayment, any such allowance from the permanent maintenance fund shall be in the form of a loan, and the court shall determine the method for repayment of such a loan by the cemetery to the fund. [Any loan from the permanent maintenance fund shall be ignored for the purpose of computing the adjusted dollar value of the fund. In the event that the court determines that an outright grant of principal from the permanent maintenance fund is necessary, the amount of such grant shall be deducted from the adjusted historic dollar value of the trust principal for the purposes of this subparagraph.]

S 2. Subparagraph 2 of paragraph (c) of section 1507 of the not-for-profit corporation law, as amended by chapter 111 of the laws of 2000, is amended to read as follows:

(2) The principal of such funds, whether kept in the perpetual care fund or otherwise, and unless already so invested when received, shall be invested within a reasonable time after receipt thereof, and kept invested, in such securities as are permitted for the investment of trust funds by sections 11-2.2 and 11-2.3 of the estates, powers and trusts law. The income arising therefrom shall be used solely for the perpetual care and maintenance of the lot or plots or parts thereof for which such income has been provided. IN ADDITION, THE GOVERNING BOARD OF THE CORPORATION MAY APPROPRIATE FOR EXPENDITURE SOLELY FOR THE PERPETUAL CARE AND MAINTENANCE OF THE LOT OR PLOTS OR PARTS THEREOF FOR WHICH SUCH

INCOME HAS BEEN PROVIDED, A PORTION OF THE NET APPRECIATION IN THE FAIR MARKET VALUE OF THE PRINCIPAL OF THE TRUST AS IS PRUDENT UNDER THE STANDARD ESTABLISHED BY ARTICLE FIVE-A OF THIS CHAPTER, THE PRUDENT MANAGEMENT OF INSTITUTIONAL FUNDS ACT. IN THE EVENT THAT A CEMETERY CORPORATION SEEKS TO APPROPRIATE ANY PERCENTAGE OF ITS NET APPRECIATION IN ITS PERPETUAL CARE FUND IN ACCORDANCE WITH THIS SUBPARAGRAPH, THE CEMETERY CORPORATION SHALL PROVIDE NOTICE OF SUCH APPROPRIATION TO THE CEMETERY BOARD NOT LESS THAN SIXTY DAYS IN ADVANCE OF SUCH PROPOSED APPROPRIATION AND SHALL DISCLOSE SUCH APPROPRIATION AS PART OF AND IN ADDITION TO THEIR ANNUAL REPORTING REQUIREMENTS AS DEFINED IN SECTION FIFTEEN HUNDRED EIGHT OF THIS ARTICLE SETTING FORTH THE AMOUNT OF FUNDS APPROPRIATED FOR SUCH EXPENDITURE AND ITS EFFECT ON THE PERPETUAL CARE FUNDS. SUCH PROPOSED APPROPRIATION SHALL BECOME EFFECTIVE SIXTY DAYS AFTER RECEIPT OF SUCH NOTICE, UNLESS THE CEMETERY BOARD WITHIN SUCH SIXTY DAY PERIOD NOTIFIES THE CEMETERY CORPORATION THAT THE BOARD OBJECTS TO THE PROPOSED APPROPRIATION.

S 3. This act shall take effect immediately.