

5111

2013-2014 Regular Sessions

I N S E N A T E

May 10, 2013

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

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

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

1 Section 1. Subparagraph 2 of paragraph (a) of section 1507 of the
2 not-for-profit corporation law, as amended by chapter 679 of the laws of
3 2004, is amended to read as follows:
4 (2) The permanent maintenance fund is hereby declared to be and shall
5 be held by the corporation as a trust fund, for the purpose of maintain-
6 ing and preserving the cemetery, including all lots, crypts, niches,
7 plots, and parts thereof. The principal of such fund shall be invested
8 in such securities as are permitted for the investment of trust funds by
9 section 11-2.3 of the estates, powers and trusts law. [The income in the
10 form of interest and ordinary dividends therefrom shall be used solely
11 for the maintenance and preservation of the cemetery grounds.] In addi-
12 tion, the governing board of the corporation may appropriate for expend-
13 iture solely for the maintenance and preservation of the cemetery
14 grounds a portion of the net appreciation, [realized (with respect to
15 all assets) and unrealized (with respect only to readily marketable
16 assets),] in the fair market value of the principal of the trust [in
17 excess of its adjusted historic dollar value, as defined in this subpar-
18 agraph], as is prudent under the standard established by [section seven
19 hundred seventeen of this chapter (duty of directors and officers) and
20 as limited by the maximum annual appropriation defined in this subpara-
21 graph. For the purposes of this subparagraph, the adjusted historic
22 dollar value of the trust principal shall be the market value of the
23 principal three full calendar years prior to the effective date of the
24 amendments made to this subparagraph, plus all subsequent additions

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

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1 thereto, minus all allowable deductions therefrom, adjusted by the rate
2 of inflation as measured by the applicable consumer price index. The
3 maximum annual appropriation shall be sixty percent of the average of
4 the net appreciation in the fund for the immediately preceding three
5 years, but only to the extent that it exceeds the adjusted historical
6 dollar value of the fund in the current year. Cemetery corporations
7 shall keep complete records of the adjusted historic dollar value of the
8 permanent maintenance fund] ARTICLE FIVE-A OF THIS CHAPTER, THE PRUDENT
9 MANAGEMENT OF INSTITUTIONAL FUNDS ACT. In the event that a cemetery
10 corporation seeks to appropriate any percentage of its net appreciation
11 in its permanent maintenance fund in accordance with this subparagraph,
12 the cemetery corporation shall [send a notice] PROVIDE NOTICE of such
13 [proposed] appropriation [by certified mail] to the [cemetery board]
14 DIVISION OF CEMETERIES AS PART OF AND IN ADDITION TO THEIR ANNUAL
15 REPORTING REQUIREMENTS AS DEFINED IN SECTION FIFTEEN HUNDRED EIGHT OF
16 THIS ARTICLE, setting forth the amount of funds [to be] appropriated for
17 such expenditure and its effect on the permanent maintenance fund[, and
18 certifying that such amount does not exceed the maximum annual appropri-
19 ation defined in this subparagraph. Such proposed appropriation shall
20 become effective sixty days after receipt of such notice, unless the
21 cemetery board within such sixty-day period notifies the cemetery corpo-
22 ration that the board objects to the proposed appropriation]. Notwith-
23 standing the foregoing provisions of this subparagraph, all principal of
24 the permanent maintenance fund shall remain inviolate, except that, upon
25 application to the supreme court in a district where a portion of the
26 cemetery grounds is located, the court may make an order permitting the
27 principal or a part thereof to be used for the purpose of current main-
28 tenance and preservation of the cemetery or otherwise. Such application
29 may be made by the cemetery board on notice to the corporation or by the
30 corporation on notice to the cemetery board. Unless the cemetery can
31 clearly demonstrate that it lacks sufficient future revenue to make
32 repayment, any such allowance from the permanent maintenance fund shall
33 be in the form of a loan, and the court shall determine the method for
34 repayment of such a loan by the cemetery to the fund. [Any loan from the
35 permanent maintenance fund shall be ignored for the purpose of computing
36 the adjusted dollar value of the fund. In the event that the court
37 determines that an outright grant of principal from the permanent main-
38 tenance fund is necessary, the amount of such grant shall be deducted
39 from the adjusted historic dollar value of the trust principal for the
40 purposes of this subparagraph.]

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

44 (2) The principal of such funds, whether kept in the perpetual care
45 fund or otherwise, and unless already so invested when received, shall
46 be invested within a reasonable time after receipt thereof, and kept
47 invested, in such securities as are permitted for the investment of
48 trust funds by sections 11-2.2 and 11-2.3 of the estates, powers and
49 trusts law. The income arising therefrom shall be used solely for the
50 perpetual care and maintenance of the lot or plots or parts thereof for
51 which such income has been provided. IN ADDITION, THE GOVERNING BOARD OF
52 THE CORPORATION MAY APPROPRIATE FOR EXPENDITURE SOLELY FOR THE PERPETUAL
53 CARE AND MAINTENANCE OF THE LOT OR PLOTS OR PARTS THEREOF FOR WHICH SUCH
54 INCOME HAS BEEN PROVIDED, A PORTION OF THE NET APPRECIATION IN THE FAIR
55 MARKET VALUE OF THE PRINCIPAL OF THE TRUST AS IS PRUDENT UNDER THE STAN-
56 DARD ESTABLISHED BY ARTICLE FIVE-A OF THIS CHAPTER, THE PRUDENT MANAGE-

1 MENT OF INSTITUTIONAL FUNDS ACT. IN THE EVENT THAT A CEMETERY CORPO-
2 RATION SEEKS TO APPROPRIATE ANY PERCENTAGE OF ITS NET APPRECIATION IN
3 ITS PERPETUAL CARE FUND IN ACCORDANCE WITH THIS SUBPARAGRAPH, THE CEME-
4 TERY CORPORATION SHALL PROVIDE NOTICE OF SUCH APPROPRIATION TO THE DIVI-
5 SION OF CEMETERIES AS PART OF AND IN ADDITION TO THEIR ANNUAL REPORTING
6 REQUIREMENTS AS DEFINED IN SECTION FIFTEEN HUNDRED EIGHT OF THIS ARTICLE
7 SETTING FORTH THE AMOUNT OF FUNDS APPROPRIATED FOR SUCH EXPENDITURE AND
8 ITS EFFECT ON THE PERPETUAL CARE FUNDS.

9 S 3. This act shall take effect immediately.