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I N   S E N A T E

April 2, 2014

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Introduced by Sen. LARKIN -- read twice and ordered printed, and when printed to be committed to the Committee on Judiciary

AN ACT to amend the estates, powers and trusts law and the not-for-profit corporation law, in relation to authorizing cemetery corporations to designate a community foundation as the trustee of a trust for the perpetual care, maintenance, improvement and embellishment of cemetery property

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

1     Section 1. The estates, powers and trusts law is amended by adding a  
2     new section 1-2.1-a to read as follows:  
3     S 1-2.1-A COMMUNITY FOUNDATION  
4     A COMMUNITY FOUNDATION IS A TAX-EXEMPT PUBLIC CHARITY, IN ACCORDANCE  
5     WITH INTERNAL REVENUE CODE SECTION 501(C)(3); THAT IS ORGANIZED AND  
6     OPERATED FOR THE LONG TERM BENEFIT OF A DEFINED GEOGRAPHIC AREA.  
7     S 2. Section 8-1.5 of the estates, powers and trusts law, as renum-  
8     bered by chapter 686 of the laws of 1967, is amended to read as follows:  
9     S 8-1.5 Trusts for cemetery purposes  
10    Dispositions of property in trust for the purpose of the perpetual  
11    care, maintenance, improvement or embellishment of cemeteries or private  
12    burial lots in cemeteries, and the roadways, lawns, hedges, walks, fenc-  
13    es, monuments, structures and tombs in such cemeteries or on such  
14    private burial lots are permitted and shall be deemed to be for charita-  
15    ble and benevolent purposes. Such dispositions are not invalid by reason  
16    of any indefiniteness or uncertainty of the persons designated as bene-  
17    ficiaries, nor shall they be invalid as violating any existing rule  
18    against perpetuities. Nothing herein contained shall affect any existing  
19    authority of the courts to determine the reasonableness of the amount of  
20    such disposition. Any cemetery association OR CEMETERY CORPORATION  
21    SUBJECT TO THE PROVISIONS OF ARTICLE FIFTEEN OF THE NOT-FOR-PROFIT  
22    CORPORATION LAW may act as trustee, OR DESIGNATE A BANK, BANKING INSTI-  
23    TUTION OR COMMUNITY FOUNDATION TO ACT AS TRUSTEE, of and execute any  
24    such trust with respect to lots, roadways, lawns, hedges, walks, fences,  
25    monuments, structures and tombs both within its own cemetery limits and

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

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1 outside of any cemetery under its control but within the county where  
2 such cemetery is located, whether or not such power is included among  
3 its corporate powers.

4 S 3. Section 8-1.6 of the estates, powers and trusts law, as amended  
5 by chapter 686 of the laws of 1967, is amended to read as follows:

6 S 8-1.6 Deposit of money in trust by owner of lots in private unincorpo-  
7 rated cemetery

8 The owner of lots in any private unincorporated cemetery may deposit  
9 in trust for the care of such lots a sum not exceeding four hundred  
10 dollars for each lot so owned with any bank [or], banking institution OR  
11 COMMUNITY FOUNDATION located [in a city, town or village] conveniently  
12 near such private unincorporated cemetery, provided such bank [or],  
13 banking institution OR COMMUNITY FOUNDATION is willing to accept such  
14 money in trust and agrees to apply the proceeds of the interest thereon  
15 to the care and upkeep of such lots. Such banks [or], banking insti-  
16 tutions AND COMMUNITY FOUNDATIONS are hereby authorized to accept such  
17 money for the purpose described herein and to apply the proceeds of the  
18 interest thereon to the care and upkeep of any such lots. The provisions  
19 of this section do not apply to savings banks.

20 S 4. Section 1502 of the not-for-profit corporation law is amended by  
21 adding a new paragraph (q) to read as follows:

22 (Q) THE TERM "COMMUNITY FOUNDATION" MEANS ANY TAX-EXEMPT PUBLIC CHARI-  
23 TY, IN ACCORDANCE WITH INTERNAL REVENUE CODE SECTION 501(C)(3), THAT IS  
24 ORGANIZED AND OPERATED FOR THE LONG TERM BENEFIT OF A DEFINED GEOGRAPHIC  
25 AREA.

26 S 5. Subdivision 7 of paragraph (a) of section 1506-a of the not-for-  
27 profit corporation law, as added by chapter 560 of the laws of 1998, is  
28 amended to read as follows:

29 (7) have, enter into or perform a management contract with any entity  
30 other than a not-for-profit cemetery corporation; PROVIDED, HOWEVER,  
31 THAT THIS SUBDIVISION SHALL NOT BE DEEMED TO PROHIBIT A CEMETERY CORPO-  
32 RATION FROM DEPOSITING MONEYS IN TRUST WITH A BANK, BANKING INSTITUTION  
33 OR COMMUNITY FOUNDATION FOR THE PURPOSE OF THE PERPETUAL CARE, MAINTE-  
34 NANCE, IMPROVEMENT AND EMBELLISHMENT OF CEMETERY PROPERTY.

35 S 6. Paragraph (e) of section 1507 of the not-for-profit corporation  
36 law, as added by chapter 871 of the laws of 1977, is amended to read as  
37 follows:

38 (e) Designation of fiduciary corporation by directors or trustees of  
39 cemetery corporation to act as custodians of funds. Notwithstanding the  
40 provisions of any other law, the directors or trustees of cemetery  
41 corporations are hereby authorized to designate a bank [or], trust  
42 company, OR COMMUNITY FOUNDATION to act as custodian and trustee of any  
43 or all of the respective funds of such cemetery corporation received by  
44 it for the perpetual care of lots in the cemetery thereof pursuant to  
45 [subdivision] PARAGRAPH (b)[,] of this section, the permanent mainte-  
46 nance of such cemetery pursuant to [subdivision] PARAGRAPH (a) of this  
47 section, and for special purposes pursuant to [subdivision] PARAGRAPH  
48 (f) of this section. Such corporate trustee shall be designated by a  
49 resolution duly adopted by the board of directors or trustees and  
50 approved by a justice of the supreme court of the judicial district in  
51 which the cemetery of said corporation is located; and the directors or  
52 trustees of such cemetery corporation may, with the approval of the  
53 justice of the supreme court, revoke such trust, and either take over  
54 such trust fund or name another trustee to handle the same, but if not  
55 so revoked, such trust shall be perpetual. Any bank [or], trust company,  
56 OR COMMUNITY FOUNDATION accepting any such cemetery fund shall keep the

1 same separate from all other funds, except that it may, irrespective of  
2 any provision contained in this article invest the same in a legal  
3 common trust fund or in shares of a mutual trust investment company  
4 organized under the banking law, and shall pay over the net income to  
5 the directors or trustees of the cemetery corporation by whom it shall  
6 be expended and applied to the purpose for which such trust fund was  
7 paid to the cemetery corporations and accounted for in accordance with  
8 such [subdivisions] PARAGRAPHS (a), (b) and (f) of this section.  
9 S 7. This act shall take effect immediately.