STATE OF NEW YORK

5426

2017-2018 Regular Sessions

IN ASSEMBLY

February 8, 2017

Introduced by M. of A. DiPIETRO -- read once and referred to the Committee on Veterans' Affairs

AN ACT to amend the executive law, in relation to the New York state veterans cemeteries

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

Section 1. Section 365 of the executive law, as added by section 5 of part W of chapter 57 of the laws of 2013, is amended to read as follows:

§ 365. New York state veterans cemeteries. 1. Legislative intent. The legislature finds and determines that the devoted service and sacrifice of veterans deserve important, unique and eternal recognition by the state of New York. That it is by means of the devoted service and sacrifice of veterans that the liberty, freedom and prosperity enjoyed by all New Yorkers is maintained and preserved.

The legislature further finds and determines that to provide this important, unique and eternal recognition, the state shall establish a program of New York state veterans cemeteries in New York. Such program shall provide for the construction, establishment, expansion, improvement, support, operation, maintenance and the provision of perpetual care for state veterans cemeteries in this state, and thereby for the memorialization and remembrance of individual veterans and their service to their community, state and nation.

The legislature additionally finds and determines that it is therefore necessary to provide for the construction and establishment of one or more New York state veterans cemeteries, and that to thereafter, provide for the expansion, improvement, support, operation, maintenance and the provision of perpetual care of all such cemeteries so constructed and established. The legislature also finds and determines that it is appropriate to have the responsibility for the construction, establishment, expansion, improvement, support, operation, maintenance and the provision of perpetual care for veterans cemeteries in this state, to be

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

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under the oversight and direction of the state division of veterans affairs, and its director, individually, and as chair of the management board, for each such veterans cemetery so constructed and established.

2. The establishment of the first New York state veterans cemetery. (a) The division, in cooperation with the United States department of veterans affairs, and in consultation with, [~~and upon the support of~~] the department of state division of cemeteries, is hereby directed to conduct an investigation and study on the issue of the construction and establishment of the first New York state veterans cemetery. Such investigation and study shall include, but not be limited to:

(i) Potential site locations for such cemetery, with full consideration as to the needs of the veterans population;

(ii) The size of the cemetery and types of grave sites;

(iii) The number of annual interments at the cemetery;

(iv) Transportation accessibility to the cemetery by veterans, their families and the general public;

(v) Costs for construction of the cemetery;

(vi) Costs of operation of the cemetery, including but not limited to staffing costs to maintain the cemetery;

(vii) Scalability of the cemetery for future growth and expansion;

(viii) Potential for funding for the cemetery from federal, local and private sources;

(ix) Cost of maintenance;

(x) Data on the population that would be served by the site;

(xi) The average age of the population in the area covered;

(xii) The mortality rate of the veteran population for the area;

(xiii) Surrounding land use;

(xiv) Topography of the land;

(xv) Site characteristics;

(xvi) Cost of land acquisition;

(xvii) The location of existing cemeteries including but not limited to national veterans' cemeteries, county veterans' cemeteries, cemeteries that have plots devoted to veterans, not-for-profit cemeteries and any other burial ground devoted to veterans and any other type of burial grounds devoted to the interment of human remains that is of public record; and

(xviii) Such other and further items as the director of the division deems necessary for the first state veterans cemetery to be successful.

A report of the investigation and study conclusions shall be delivered to the governor, the temporary president of the senate, the speaker of the assembly and the chair of the senate committee on veterans, homeland security and military affairs, and the chair of the assembly committee on veterans' affairs by no later than one hundred eighty days after the division has commenced the conduct of the investigation and study.

(b) [~~Prior to the commencement of the investigation and study pursuant to paragraph (a) of this subdivision, the director of the division of veterans' affairs, the director of the division of the budget, the director of the department of state's division of cemeteries, and the office of the state comptroller must certify to the governor, the temporary president of the senate, the speaker of the assembly, the chair of the senate finance committee and the chair of the assembly ways and means committee that the veterans remembrance and cemetery maintenance and operation fund, created pursuant to section ninety-seven-mmmm of the state finance law, contains moneys sufficient, adjusted to reflect projected future inflation, to fund the operation, maintenance and the provision of perpetual care of a state veterans' cemetery for a period~~

~~of not less than fifteen years, provided that such amount shall not include any amount that shall be reimbursed or contributed to the cemetery from the government of the United States or any amount that would be recoverable by the cemetery pursuant to a charge of fee for the provision of a grave site for a non-veteran spouse or family member. In making such a certification, the director of the division of veterans' affairs, the director of the division of the budget, the director of the department of state's division of cemeteries, and the office of the state comptroller shall consider, but are not limited to, the following factors:~~

~~(i) physical attributes of the veterans cemetery, including size, location, and terrain;~~

~~(ii) management and operation, including staffing costs, cost of equipment and equipment maintenance, and security costs;~~

~~(iii) relevant state and federal requirements and specifications for interment and perpetual care;~~

~~(iv) estimates provided by the United States department of veterans affairs;~~

~~(v) any other fiscal cost, charge or assessment that would be incurred by the cemetery.~~

~~(c) By no~~] **No** later than ninety days following the issuance of the report, pursuant to the rules and regulations issued under paragraph [~~(h)~~] **(f)** of this subdivision, the director shall issue, on behalf of the division, a request for proposals for any local government desiring to have the first state veterans cemetery located within its political subdivision. Such request for proposals shall be returnable to the division by no later than sixty days following the issuance of the request for proposals.

[~~(d)~~] **(c)** No later than sixty days following the deadline for the return of requests for proposals pursuant to paragraph [~~(c)~~] **(b)** of this subdivision, the director, in consultation with the management board of the first New York state veterans cemetery, shall select a site for the first New York state veterans cemetery. In selecting such site, the director shall consider:

(i) The investigation and study, and the report produced by the same, pursuant to paragraph (a) of this subdivision;

(ii) The submitted responses to the requests for proposals issued pursuant to paragraph (b) of this subdivision;

(iii) The guidelines for receipt of federal funding specified in section 2408 of title 38 of the United States code, part 39 of title 38 of the code of federal regulations, and any other relevant federal statute or regulation;

(iv) The possibility of funding from private individuals, corporations or foundations; and

(v) Any other consideration that would facilitate the successful operation of the first New York state veterans cemetery.

[~~(e)~~] **(d)** No later than thirty days following the selection of the site pursuant to paragraph [~~(d)~~] **(c)** of this subdivision, the director, in consultation with the management board of the first New York state veterans cemetery, shall commence the application process for funding from the government of the United States, in accordance with the grant requirements specified in section 2408 of title 38 of the United States code, part 39 of title 38 of the code of federal regulations, and any other relevant federal statute or regulation, for the purpose of seeking funds to support the construction, establishment, expansion, improvement, support, operation, maintenance and the provision of perpetual

care of New York state's first veterans cemetery. Such grant application shall be based on a site selected pursuant to paragraph [~~(d)~~] (c) of this subdivision, and shall be consistent with the guidelines for receipt of federal funding pursuant to the relevant provisions of federal law.

[~~(f)~~] (e) A management board for the first New York state veterans cemetery shall be appointed pursuant to subdivision three of this section.

[~~(g) Nothing in this section shall be construed to authorize the division of veterans' affairs to commence an investigation and study pursuant to paragraph (a) of this subdivision, issuing a request for proposals pursuant to paragraph (c) of this subdivision, selecting a site for the first New York state veterans cemetery pursuant to paragraph (d) of this subdivision, or submitting any application for funding from the government of the United States in accordance with the grant requirements specified in section 2408 of title 38 of the United States code, part 30 of title 38 of the code of federal regulations, and other relevant federal statutes or regulations, for the purpose of seeking funds to support the construction, establishment, expansion, improvement, support, operation, maintenance and the provision of perpetual care of New York state's first veterans cemetery pursuant to paragraph (e) of this subdivision until the funds in the veterans remembrance and cemetery maintenance and operation fund have been certified pursuant to paragraph (b) of this subdivision.~~

~~(h)~~] (f) The director shall promulgate rules and regulations governing:

(i) The guidelines and standards for the construction, establishment, expansion, improvement, support, operation, maintenance and the provision of perpetual care for a state veterans cemetery. Such guidelines shall include, but not be limited to:

(1) The size and terrain of the cemetery;

(2) The management and operation of the cemetery, including but not limited to:

(A) Hours of operation;

(B) Employees, employee relations, and employee duties;

(C) The conduct and practice of events, ceremonies and programs;

(D) The filing and compliance of the cemetery with state and federal regulators; and

(E) Such other and further operational and management practices and procedures as the director shall determine to be necessary for the successful operation of a state veterans cemetery.

(3) The layout of plots;

(4) The locations of building and infrastructure, including but not limited to:

(A) Electrical lines and facilities;

(B) Waterlines, irrigation systems, and drainage facilities;

(C) Trees, flowers and other plantings;

(D) Non gravesite memorials, gravesite memorials, mausoleums, columbarium niches, headstones, grave markers, indoor interment facilities, committal-service shelters, signage, flag poles, and other memorial gathering spaces or infrastructure;

(E) Roadways, pedestrian pathways, parking sites, curbs and curb cuts;

(F) Ponds, lakes and other water sites;

(G) Retaining walls, gates, fences, security systems or other devices for cemetery protection; and

(H) Any other buildings, structures or infrastructure necessary for the safe, efficient and effective operation of the cemetery;

(5) The qualifications for interment, consistent with the provisions of state and federal law and any requirements pursuant to the receipt of federal, state, local or private funds;

(6) The location and placement of interments;

(7) Consistent with the provisions of state and federal law and any requirements pursuant to the receipt of federal, state, local or private funds, the financial management of the cemetery, including but not limited to:

(A) The procedures for the protection and implementation of the cemetery's annual budget;

(B) The seeking, collecting, deposit and expenditure of operating funds pursuant to the cemetery's budget;

(C) The seeking, collecting, deposit and expenditure of capital funds pursuant to the cemetery's capital plan;

(D) The seeking, collecting, deposit and expenditure of emergency funds to address an unexpected event;

(E) The assessment, charging, collection and deposit of fees and charges;

(F) The management of cemetery finances, both current and future, with respect to investments; and

(G) Such other and further procedures and activities concerning the financial management of the cemetery;

(8) The provision of perpetual care for the cemetery, including but not limited to:

(A) The frequency, standards and methods for the beautification and maintenance of grounds, memorials, gravesites, buildings, ceremonial sites, or other locations within, or upon the curtilage of the cemetery;

(B) The frequency, standards and methods for the provision of flags, patriotic and military symbols, and other honorary items, at each gravesite and throughout the cemetery; and

(C) Such other and further standards as are necessary to assure the proper perpetual care of the cemetery in a manner befitting the highest level of honor and respect deserving to those veterans and their families interred in the cemetery;

(9) Guidelines and standards for the procurement of land for the cemetery providing that the state veterans cemetery, and all the property upon which it resides shall be owned in fee simple absolute by the state of New York;

(10) Guidelines and standards for the practices and procedures for the construction and establishment of a state veterans cemetery, including contracting and purchasing for construction services, professional services, legal services, architectural services, consulting services, as well as the procurement of materials, all consistent with the relevant provisions of federal, state and local law, the regulations promulgated thereunder, and the requirements contained in the grants awarded or pursued from the federal government, or any source of private funding;

(11) Guidelines and standards for the practices and procedures for the expansion and improvement of a state veterans cemetery, including contracting and purchasing for construction services, professional services, legal services, architectural services, consulting services, as well as the procurement of materials, all consistent with the relevant provisions of federal, state and local law, the regulations promulgated thereunder, and the requirements contained in the grants awarded

or pursued from the federal government, or any source of private funding;

(12) Any other guidelines and standards that would facilitate the successful construction, establishment, expansion, improvement, support, operation, maintenance and the provision of perpetual care for the state veterans cemetery;

(ii) Guidelines and standards for the request for proposals for any local government desiring to have the first state veterans cemetery located within its political subdivision, pursuant to paragraph (b) of this subdivision, including, but not limited to:

(1) The form, requirements and standards required for submission of a response to the request for proposals;

(2) The requirement, if the director so elects, that a response shall require the local government to agree to contract with the state of New York that all costs for construction, establishment, expansion, improvement, support, operation, maintenance and the provision of perpetual care of the veterans cemetery shall be the sole responsibility of, and paid by the local government, and that to the extent such costs are not paid or reimbursed by the government of the United States, or a private individual, corporation or foundation;

(3) The requirement that the local government will comply with all state and federal statutes and regulations concerning the construction, establishment, expansion, improvement, support, operation, maintenance and the provision of perpetual care of the state veterans cemetery, and shall satisfy any and all applicable state and federal standards and requirements for the perpetual care of the state veterans cemetery;

(4) That the state veterans cemetery, and all the property upon which it resides shall be owned in fee simple absolute by the state of New York;

(5) That all lands upon which such cemetery is constructed and established shall be used solely for state veterans cemetery purposes, and for the purpose of providing the honor and remembrance of veterans and their service through ceremonies and programs;

(6) The requirement that a response shall require the local government to agree to authorize the state of New York, in the event that the local government fails to perform its obligations under the contract with the state of New York, that the state director of the division of veterans' affairs shall certify to the comptroller any unpaid amounts or any amounts necessary for the state to assume the obligations which the local government failed to perform, and the comptroller shall, to the extent not otherwise prohibited by law, withhold such amount from any state aid or other amount payable to such local government; to the extent that sufficient funds are not available for such withholding, the state may pursue any and all available legal remedies to enforce the terms of the contract entered into between the state and a local government pursuant to this subdivision; and

(7) Such other and further requirements as the director may deem prudent in the facilitation of the successful siting and operation of a state veterans cemetery in the jurisdiction of the local government; and

(iii) Such other and further guidelines and standards as are necessary for the successful construction, establishment, expansion, improvement, support, operation, maintenance and the provision of perpetual care for a state veterans cemetery;

[~~(i) Upon the approval of the application for funding from the government of the United States, made pursuant to paragraph (e) of this subdivision, the director, upon consultation with the management board,~~]

(g) No later than January first, two thousand nineteen, the director shall commence the process of construction and establishment of the first state veterans cemetery. Such process shall be consistent with the relevant provisions of local, state and federal law, and the rules and regulations established pursuant to paragraph [~~(h)~~] **(f)** of this subdivision.

3. Management boards of New York state veterans cemeteries. (a) For each New York state veterans cemetery there shall be a management board. Each such management board shall consist of nine members, including the director of the division who shall serve as chair, and four members, appointed by the governor. Of such four members, not fewer than two shall be a veteran of the United States army, the United States navy, the United States air force, the United States marines, the New York army national guard, the New York air national guard, the New York naval militia, or a member who has served in a theater of combat operations of the United States coast guard or the United States merchant marine. Two members shall be appointed by the temporary president of the senate, and two members shall be appointed by the speaker of the state assembly. At least one of the members appointed by the temporary president of the senate and at least one of the members appointed by the speaker of the assembly shall be a veteran of the United States army, the United States navy, the United States air force, the United States marines, the New York army national guard, the New York air national guard, the New York naval militia, or a member who has served in a theater of combat operations of the United States coast guard or the United States merchant marine. No member shall receive any compensation for his or her service, but members who are not state officials may be reimbursed for their actual and necessary expenses, including travel expenses incurred in performance of their duties. The management board may consult with any federal, state or local entity for the purposes of advancing its purposes, mission and duties.

(b) The management board shall advise, by majority vote, the director on issues concerning the construction, establishment, expansion, improvement, support, operation, maintenance and the provision of perpetual care for the veterans cemetery, including but not limited to issues of financial concern, employment relations, cemetery policy, cemetery events and programs, and such other and further issues as the board and director shall deem important.

4. Additional state veterans cemeteries. (a) Not later than [~~ten~~] **three** years after the construction and establishment of the first New York state veterans cemetery, and every ten years thereafter, the division, in cooperation with the United States department of veterans affairs, shall conduct an investigation and study on the issue of the construction and establishment of additional New York state veterans cemeteries. Such investigation and study shall consider, but not be limited to, the study parameters established pursuant to paragraph (a) of subdivision two of this section. A report of the investigation and study required to be conducted pursuant to this subdivision shall be delivered to the governor, the temporary president of the senate, the speaker of the assembly and the chair of the senate committee on veterans, homeland security and military affairs, and the chair of the assembly committee on veterans' affairs, by no later than ninety days after the division has commenced the conduct of the investigation and study;

(b) The report of the investigation and study required to be conducted pursuant to this subdivision shall provide a determination by the director as to whether the state should construct and establish one or more

additional veterans cemeteries, and shall state the reasoning and basis for such determination; and

(c) The division may, at the discretion of the director, at any time after five years from the completion of construction of the most recently constructed and established state veterans cemetery, in cooperation with the United States department of veterans affairs, conduct an investigation and study on the issue of the construction and establishment of additional New York state veterans cemeteries. A report of the investigation and study required to be conducted shall be delivered to the governor, the temporary president of the senate, the speaker of the assembly and the chair of the senate committee on veterans, homeland security and military affairs, and the chair of the assembly committee on veterans' affairs, by no later than ninety days after the division has commenced the conduct of the investigation and study.

(d) If the director, pursuant to the investigation and study conducted pursuant to this subdivision, determines that there shall be an additional state veterans cemetery in New York state, the director shall provide for the construction and establishment of such new veterans cemetery pursuant to the same guidelines and standards for the construction and establishment of the first state veterans cemetery under this section.

5. Expansion and improvement of existing state veterans cemeteries. The director, in consultation with the management board of a state veterans cemetery, may provide for the expansion and/or improvement of the cemetery. Such expansion and improvement shall be conducted in accordance with the rules and regulations of the division under paragraph [~~(h)~~] **(f)** of subdivision two of this section.

§ 2. This act shall take effect immediately.