

STATE OF NEW YORK

10638

IN ASSEMBLY

June 10, 2020

Introduced by COMMITTEE ON RULES -- (at request of M. of A. Sayegh) --
read once and referred to the Committee on Corporations, Authorities
and Commissions

AN ACT to amend the not-for-profit corporation law, the executive law,
the state finance law and the general municipal law, in relation to
moving the division of cemeteries from the department of state to the
department of health

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

1 Section 1. Paragraph (a) of section 1504 of the not-for-profit corpo-
2 ration law, as added by chapter 871 of the laws of 1977, is amended to
3 read as follows:

4 (a) A cemetery board is hereby created within the division of ceme-
5 teries in the department of [~~state~~] health, subject to the following
6 requirements: (1) The members of such board shall be the commissioner
7 of health, the secretary of state[~~7~~] and the attorney general [~~and the~~
8 ~~commissioner of health~~], who shall serve without additional compen-
9 sation. (2) The commissioner of health, the secretary of state[~~7~~] and
10 the attorney general [~~and commissioner of health~~] may each, by official
11 order filed in the office of his or her respective department and in the
12 office of the board, designate a deputy or other representative in his
13 or her department to perform any or all of the duties under this section
14 of the department head making such designation, as may be provided in
15 such order. Such designation shall be deemed temporary only and shall
16 not affect the civil service or retirement rights of any person so
17 designated. Such designees shall serve without additional compensation.

18 (3) The [~~secretary of state~~] commissioner of health shall be [~~chairman~~]
19 chairperson of such board, provided that in his or her absence at any
20 meeting of the board the secretary of state or the attorney general [~~or~~
21 ~~the commissioner of health~~], in such order, if either or both be pres-
22 ent, shall act as [~~chairman~~] chairperson. When designees of such offi-
23 cers, in the absence of all such officers, are present at any meeting of
24 the board, the designee of the [~~secretary of state~~] commissioner of
25 health, if present, and in his or her absence one of the other designees

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

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present, in the same order of preference as provided for the officer appointing him or her, shall act as [~~chairman~~] chairperson. (4) Technical, legal or other services shall be performed in so far as practicable by personnel of the departments of [~~state, law and health~~] health, state and law without additional compensation but the board may employ and compensate within appropriations available therefor such assistants and employees as may be necessary to carry out the provisions of this section and may prescribe their powers and duties. (5) Two members of the board shall constitute a quorum to transact the business of the board at both regular and special meetings. (6) The board shall meet at least once a month, shall keep a record of all its proceedings and shall determine the rules of its own proceedings. (7) Special meetings may be called by the [~~chairman~~] chairperson upon his or her initiative, and must be called by him or her upon receipt of a written request therefor signed by another member of the board. Written notice of the time and place of such special meeting shall be delivered to the office of each member of the board. (8) The board shall have the duty of administering the provisions of this chapter which deal with cemetery corporations other than the cemeteries and cemetery corporations enumerated in section fifteen hundred three of this article and shall have all the powers herein provided and such other powers and duties as may be otherwise prescribed by law.

§ 2. Paragraph (b) of section 1401 of the not-for-profit corporation law, as amended by section 34 of part AA of chapter 56 of the laws of 2019, is amended to read as follows:

(b) Removal of remains from private cemeteries to other cemeteries. The supervisor of any town containing a private cemetery may remove any body interred in such cemetery to any other cemetery within the town, if the owners of such cemeteries and the next of kin of the deceased consent to such removal. The owners of a private cemetery may remove the bodies interred therein to any other cemetery within such town, or to any cemetery designated by the next of kin of the deceased. Notice of such removal shall be given within twenty days before such removal personally or by certified mail to the next of kin of the deceased if known and to the clerk and historian of the county in which such real property is situated and notice shall be given to the New York state department of [~~state~~] health, division of cemeteries. If any of the deceased are known to be veterans, the owners shall also notify the division of veterans' services. In the absence of the next of kin, the county clerk, county historian or the division of veterans' services may act as a guardian to ensure proper reburial.

§ 3. Paragraph (c) of section 1502 of the not-for-profit corporation law, as added by chapter 871 of the laws of 1977, is amended to read as follows:

(c) The term "cemetery board" means the cemetery board in the division of cemeteries in the department of [~~state~~] health.

§ 4. Subparagraphs 1, 4, 5 and 6 of paragraph (h) of section 1507 of the not-for-profit corporation law, subparagraphs 1, 5 and 6 as amended by chapter 380 of the laws of 2000 and subparagraph 4 as amended by chapter 363 of the laws of 2009, are amended to read as follows:

(1) Cemeteries incorporated under this article shall contribute to a fund created pursuant to section ninety-seven-r of the state finance law for the maintenance of abandoned cemeteries, including the construction of cemetery fences, placement of cemetery lights and replacement of cemetery doors and locks, for the restoration of property damaged by acts of vandalism, and for the repair or removal of monuments or other

1 markers not owned by the cemetery corporation that have fallen into
2 disrepair or dilapidation so as to create a dangerous condition. Such
3 fund shall be administered by a board of trustees comprised of the
4 commissioner of health, the secretary of state[,] and the attorney
5 general [~~and the commissioner of health~~], or their designees, who shall
6 serve without additional compensation.

7 (4) Authorization for payments by the fund for maintenance of an aban-
8 doned cemetery shall be made by the [~~secretary of state~~] commissioner of
9 health only upon approval by the cemetery board of an application by a
10 municipality or other solvent not-for-profit cemetery corporation for
11 fair and reasonable expenses required to be made by the municipality or
12 other solvent not-for-profit cemetery corporation for maintenance of an
13 abandoned cemetery; provided, however, that the cemetery board shall not
14 approve any such application unless the municipality or other solvent
15 not-for-profit cemetery corporation acknowledges that the responsibility
16 for restoration and future care, preservation, and maintenance of such
17 cemetery has been assumed by the municipality or other solvent not-for-
18 profit cemetery corporation. For the purposes of this paragraph, such
19 cemetery shall always be deemed an abandoned cemetery.

20 (5) Authorization for payments by the fund for the repair of vandalism
21 damage shall be made by the [~~secretary of state~~] commissioner of health
22 only on approval by the New York state cemetery board which shall deter-
23 mine:

24 (i) that an act of vandalism to the extent described by the cemetery
25 corporation did take place;

26 (ii) that either a written report of the vandalism was filed with the
27 local police or sheriff's department, or, that the cemetery, upon
28 consent of the division, made a determination not to file the report
29 because the publicity generated by filing the report would have adverse
30 consequences for the cemetery;

31 (iii) that the cost of repairs is fair and reasonable; and

32 (iv) that the cemetery corporation has been unable to obtain funds
33 from the lot owner, his spouse, devisees or descendants within a reason-
34 able period of time nor are there adequate funds in the cemetery corpo-
35 rations monument maintenance fund, if such a fund has been established
36 by the cemetery.

37 (6) Authorization for payments by the fund for the repair or removal
38 of monuments or other markers not owned by the cemetery corporation
39 shall be made by the [~~secretary of state~~] commissioner of health only on
40 approval by the New York state cemetery board on application by the
41 cemetery corporation showing:

42 (i) that the monuments or markers are so badly out of repair or dila-
43 pidated as to create a dangerous condition;

44 (ii) that the cost of remedying the condition is fair and reasonable;

45 (iii) that the cemetery corporation has given not less than sixty days
46 notice to the last known owner to repair or remove the monument or other
47 marker and the said owner has failed to do so within the time prescribed
48 in said notice.

49 § 5. Paragraph (b) of section 1507-a of the not-for-profit corporation
50 law, as added by chapter 895 of the laws of 1990, is amended to read as
51 follows:

52 (b) The advisory council shall be composed of a member designated by
53 the commissioner of health, a member designated by the secretary of
54 state, a member designated by the attorney general, [~~a member designated~~
55 ~~by the commissioner of health,~~] a member designated by the comptroller
56 and a member designated by the commissioner of taxation and finance. The

1 appointees to the advisory council shall not be employees of the depart-
2 ment of health, department of state, department of law, [~~department of~~
3 ~~health~~], department of audit and control or department of taxation and
4 finance. Each of the members shall serve for a term of two years,
5 provided, however, that the first appointments by the comptroller and
6 commissioner of taxation and finance shall serve for a term of one
7 year. Vacancies occurring other than by expiration of term shall be
8 filled in the same manner as the original appointments for the balance
9 of the unexpired term. Persons designated or appointed to the advisory
10 council shall have demonstrated a long-standing interest, knowledge and
11 experience in the care and preservation of gravesites. One member shall
12 be elected [~~chairman~~] chairperson of the advisory council by a majority
13 vote of the members of such council.

14 § 6. Paragraph (1) of section 1510 of the not-for-profit corporation
15 law, as added by chapter 821 of the laws of 1992, is amended to read as
16 follows:

17 (1) Removal of monument. No person or organization shall remove a
18 monument without authorization in the form of a court order from a court
19 of competent jurisdiction, or without the written authorization of the
20 owner of a burial plot, or the lineal descendants of the deceased, if
21 such owner or lineal descendants are known, and without obtaining writ-
22 ten approval from a duly incorporated cemetery association, which asso-
23 ciation shall keep a record of all such written approvals. The
24 provisions of this section shall not prohibit the removal, in accordance
25 with rules and regulations promulgated by the [~~secretary of state~~]
26 commissioner of health, of a monument for the purpose of repair, nonpay-
27 ment or adding inscriptions as authorized by a cemetery association or
28 as permitted in this article. A violation of any provision of this para-
29 graph shall be punishable by a fine not to exceed five hundred dollars.

30 § 7. The opening paragraphs of paragraphs (a) and (b) of subdivision 2
31 of section 365 of the executive law, as amended by section 11 of part AA
32 of chapter 56 of the laws of 2019, are amended to read as follows:

33 The division, in cooperation with the United States department of
34 veterans affairs, and in consultation with, and upon the support of the
35 department of [~~state~~] health division of cemeteries, is hereby directed
36 to conduct an investigation and study on the issue of the construction
37 and establishment of the first New York state veterans' cemetery. Such
38 investigation and study shall include, but not be limited to:

39 Prior to the commencement of the investigation and study pursuant to
40 paragraph (a) of this subdivision, the director of the division of
41 veterans' services, the director of the division of the budget, the
42 director of the department of [~~state's~~] health's division of cemeteries,
43 and the office of the state comptroller must certify to the governor,
44 the temporary president of the senate, the speaker of the assembly, the
45 chair of the senate finance committee and the chair of the assembly ways
46 and means committee that the veterans remembrance and cemetery mainte-
47 nance and operation fund, created pursuant to section ninety-seven-mmmmm
48 of the state finance law, contains moneys sufficient, adjusted to
49 reflect projected future inflation, to fund the operation, maintenance
50 and the provision of perpetual care of a state veterans' cemetery for a
51 period of not less than fifteen years, provided that such amount shall
52 not include any amount that shall be reimbursed or contributed to the
53 cemetery from the government of the United States or any amount that
54 would be recoverable by the cemetery pursuant to a charge of fee for the
55 provision of a grave site for a non-veteran spouse or family member. In
56 making such a certification, the director of the division of veterans'

1 services, the director of the division of the budget, the director of
2 the department of [~~state's~~] health's division of cemeteries, and the
3 office of the state comptroller shall consider, but are not limited to,
4 the following factors:

5 § 8. Subdivision 3 of section 97-r of the state finance law, as added
6 by chapter 495 of the laws of 1988, is amended to read as follows:

7 3. Moneys of the fund may be expended for the purposes provided in
8 subparagraph three of paragraph (h) of section fifteen hundred seven of
9 the not-for-profit corporation law according to the requirements of such
10 paragraph (h). Moneys shall be paid out of the fund on the audit and
11 warrant of the state comptroller on vouchers certified or approved by
12 the [~~secretary of state~~] commissioner of health.

13 § 9. Subdivision 2 of section 165 of the general municipal law, as
14 added by chapter 363 of the laws of 1996, is amended to read as follows:

15 2. The cemetery division of the department of [~~state~~] health is hereby
16 authorized and directed to assist any municipal corporation in the
17 organization, implementation and administration of a volunteer cemetery
18 maintenance and cleanup program at the request of such municipal corpo-
19 ration. The department of [~~state~~] health is hereby authorized and
20 directed to promulgate rules and regulations setting forth the manner
21 and form of such assistance and request.

22 § 10. This act shall take effect one year after it shall have become a
23 law. Effective immediately, the addition, amendment and/or repeal of any
24 rule or regulation necessary for the implementation of this act on its
25 effective date are authorized to be made and completed on or before such
26 effective date.