

# STATE OF NEW YORK

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5347

2019-2020 Regular Sessions

## IN ASSEMBLY

February 11, 2019

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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:

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

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

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

17 The legislature additionally finds and determines that it is therefore  
18 necessary to provide for the construction and establishment of one or  
19 more New York state veterans cemeteries, and that to thereafter, provide  
20 for the expansion, improvement, support, operation, maintenance and the  
21 provision of perpetual care of all such cemeteries so constructed and  
22 established. The legislature also finds and determines that it is appropriate  
23 to have the responsibility for the construction, establishment,  
24 expansion, improvement, support, operation, maintenance and the  
25 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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1 under the oversight and direction of the state division of veterans  
2 affairs, and its director, individually, and as chair of the management  
3 board, for each such veterans cemetery so constructed and established.

4 2. The establishment of the first New York state veterans cemetery.

5 (a) The division, in cooperation with the United States department of  
6 veterans affairs, and in consultation with~~[, and upon the support of]~~  
7 the department of state division of cemeteries, is hereby directed to  
8 conduct an investigation and study on the issue of the construction and  
9 establishment of the first New York state veterans cemetery. Such inves-

10 tigation and study shall include, but not be limited to:

11 (i) Potential site locations for such cemetery, with full consider-  
12 ation as to the needs of the veterans population;

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

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

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

17 (v) Costs for construction of the cemetery;

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

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

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

23 (ix) Cost of maintenance;

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

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

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

27 (xiii) Surrounding land use;

28 (xiv) Topography of the land;

29 (xv) Site characteristics;

30 (xvi) Cost of land acquisition;

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

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

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

45 (b) ~~[Prior to the commencement of the investigation and study pursuant~~  
46 ~~to paragraph (a) of this subdivision, the director of the division of~~  
47 ~~veterans' affairs, the director of the division of the budget, the~~  
48 ~~director of the department of state's division of cemeteries, and the~~  
49 ~~office of the state comptroller must certify to the governor, the tempo-~~  
50 ~~rary president of the senate, the speaker of the assembly, the chair of~~  
51 ~~the senate finance committee and the chair of the assembly ways and~~  
52 ~~means committee that the veterans remembrance and cemetery maintenance~~  
53 ~~and operation fund, created pursuant to section ninety-seven mmmm of the~~  
54 ~~state finance law, contains moneys sufficient, adjusted to reflect~~  
55 ~~projected future inflation, to fund the operation, maintenance and the~~  
56 ~~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.~~

~~(e)~~ By 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 ~~(e)~~ (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

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

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

9 ~~[(g) Nothing in this section shall be construed to authorize the divi-  
10 sion of veterans' affairs to commence an investigation and study pursu-  
11 ant to paragraph (a) of this subdivision, issuing a request for  
12 proposals pursuant to paragraph (c) of this subdivision, selecting a  
13 site for the first New York state veterans cemetery pursuant to para-  
14 graph (d) of this subdivision, or submitting any application for funding  
15 from the government of the United States in accordance with the grant  
16 requirements specified in section 2408 of title 38 of the United States  
17 code, part 30 of title 38 of the code of federal regulations, and other  
18 relevant federal statutes or regulations, for the purpose of seeking  
19 funds to support the construction, establishment, expansion, improve-  
20 ment, support, operation, maintenance and the provision of perpetual  
21 care of New York state's first veterans cemetery pursuant to paragraph  
22 (e) of this subdivision until the funds in the veterans remembrance and  
23 cemetery maintenance and operation fund have been certified pursuant to  
24 paragraph (b) of this subdivision.]~~

25 ~~[(h)]~~ (f) The director shall promulgate rules and regulations govern-  
26 ing:

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

31 (1) The size and terrain of the cemetery;

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

34 (A) Hours of operation;

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

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

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

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

42 (3) The layout of plots;

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

45 (A) Electrical lines and facilities;

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

47 (C) Trees, flowers and other plantings;

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

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

53 (F) Ponds, lakes and other water sites;

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

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

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

6 (6) The location and placement of interments;

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

11 (A) The procedures for the protection and implementation of the ceme-  
12 tery's annual budget;

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

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

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

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

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

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

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

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

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

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

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

41 (10) Guidelines and standards for the practices and procedures for the  
42 construction and establishment of a state veterans cemetery, including  
43 contracting and purchasing for construction services, professional  
44 services, legal services, architectural services, consulting services,  
45 as well as the procurement of materials, all consistent with the rele-  
46 vant provisions of federal, state and local law, the regulations promul-  
47 gated thereunder, and the requirements contained in the grants awarded  
48 or pursued from the federal government, or any source of private fund-  
49 ing;

50 (11) Guidelines and standards for the practices and procedures for the  
51 expansion and improvement of a state veterans cemetery, including  
52 contracting and purchasing for construction services, professional  
53 services, legal services, architectural services, consulting services,  
54 as well as the procurement of materials, all consistent with the rele-  
55 vant provisions of federal, state and local law, the regulations promul-  
56 gated thereunder, and the requirements contained in the grants awarded

1 or pursued from the federal government, or any source of private fund-  
2 ing;

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

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

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

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

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

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

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

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

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

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

54 ~~[(i) Upon the approval of the application for funding from the govern-~~  
55 ~~ment of the United States, made pursuant to paragraph (e) of this subdi-~~  
56 ~~vision, the director, upon consultation with the management board,]~~

1 (g) No later than January first, two thousand twenty-one, the director  
2 shall commence the process of construction and establishment of the  
3 first state veterans cemetery. Such process shall be consistent with the  
4 relevant provisions of local, state and federal law, and the rules and  
5 regulations established pursuant to paragraph [~~(h)~~] (f) of this subdivi-  
6 sion.

7 3. Management boards of New York state veterans cemeteries. (a) For  
8 each New York state veterans cemetery there shall be a management board.  
9 Each such management board shall consist of nine members, including the  
10 director of the division who shall serve as chair, and four members,  
11 appointed by the governor. Of such four members, not fewer than two  
12 shall be a veteran of the United States army, the United States navy,  
13 the United States air force, the United States marines, the New York  
14 army national guard, the New York air national guard, the New York naval  
15 militia, or a member who has served in a theater of combat operations of  
16 the United States coast guard or the United States merchant marine. Two  
17 members shall be appointed by the temporary president of the senate, and  
18 two members shall be appointed by the speaker of the state assembly. At  
19 least one of the members appointed by the temporary president of the  
20 senate and at least one of the members appointed by the speaker of the  
21 assembly shall be a veteran of the United States army, the United States  
22 navy, the United States air force, the United States marines, the New  
23 York army national guard, the New York air national guard, the New York  
24 naval militia, or a member who has served in a theater of combat oper-  
25 ations of the United States coast guard or the United States merchant  
26 marine. No member shall receive any compensation for his or her service,  
27 but members who are not state officials may be reimbursed for their  
28 actual and necessary expenses, including travel expenses incurred in  
29 performance of their duties. The management board may consult with any  
30 federal, state or local entity for the purposes of advancing its  
31 purposes, mission and duties.

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

39 4. Additional state veterans cemeteries. (a) Not later than [~~ten~~]  
40 three years after the construction and establishment of the first New  
41 York state veterans cemetery, and every ten years thereafter, the divi-  
42 sion, in cooperation with the United States department of veterans  
43 affairs, shall conduct an investigation and study on the issue of the  
44 construction and establishment of additional New York state veterans  
45 cemeteries. Such investigation and study shall consider, but not be  
46 limited to, the study parameters established pursuant to paragraph (a)  
47 of subdivision two of this section. A report of the investigation and  
48 study required to be conducted pursuant to this subdivision shall be  
49 delivered to the governor, the temporary president of the senate, the  
50 speaker of the assembly and the chair of the senate committee on veter-  
51 ans, homeland security and military affairs, and the chair of the assem-  
52 bly committee on veterans' affairs, by no later than ninety days after  
53 the division has commenced the conduct of the investigation and study;

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

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

3 (c) The division may, at the discretion of the director, at any time  
4 after five years from the completion of construction of the most recent-  
5 ly constructed and established state veterans cemetery, in cooperation  
6 with the United States department of veterans affairs, conduct an inves-  
7 tigation and study on the issue of the construction and establishment of  
8 additional New York state veterans cemeteries. A report of the investi-  
9 gation and study required to be conducted shall be delivered to the  
10 governor, the temporary president of the senate, the speaker of the  
11 assembly and the chair of the senate committee on veterans, homeland  
12 security and military affairs, and the chair of the assembly committee  
13 on veterans' affairs, by no later than ninety days after the division  
14 has commenced the conduct of the investigation and study.

15 (d) If the director, pursuant to the investigation and study conducted  
16 pursuant to this subdivision, determines that there shall be an addi-  
17 tional state veterans cemetery in New York state, the director shall  
18 provide for the construction and establishment of such new veterans  
19 cemetery pursuant to the same guidelines and standards for the  
20 construction and establishment of the first state veterans cemetery  
21 under this section.

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

28 § 2. This act shall take effect immediately.