STATE OF NEW YORK

9089

IN ASSEMBLY

January 17, 2020

Introduced by M. of A. PAULIN -- read once and referred to the Committee on Corporations, Authorities and Commissions

AN ACT to amend the not-for-profit corporation law, in relation to requiring consent prior to the merger of cemetery corporations

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

Section 1. Paragraph (c) of section 1506 of the not-for-profit corporation law, as amended by chapter 553 of the laws of 2019, is amended to read as follows:

(c) Cemeteries in Kings, Queens, Rockland, Westchester, Nassau, Suffolk, Putnam and Erie counties. A cemetery corporation shall not take by deed, devise**, merger** or otherwise any land in the counties of Kings, Queens, Rockland, Westchester, Nassau, Suffolk, Putnam or Erie for cemetery purposes, or set apart any ground therefor in any of such counties, unless the consent of the board of supervisors or legislative body thereof, or of the city council of the city of New York, in respect to Kings or Queens county, be first obtained [~~except as provided in paragraph (n) of this section~~]. Such consent may be granted upon such conditions and under such regulations and restrictions as the public health and welfare may require. Notice of application for such consent shall be published, once a week for six weeks, in the newspapers designated to publish the session laws and in such other newspapers published in the county as such board or body may direct, stating the time when the application will be made, a brief description of the lands proposed to be acquired, their location and the area thereof. Any person interested therein may be heard on such presentation. If such consent is granted the corporation may take and hold the lands designated therein. The consent shall not authorize any one corporation to take or hold more than two hundred and fifty acres of land [~~except as provided in paragraph (n) of this section~~]**, except that such limitation shall not apply in the event of a merger of cemetery corporations**. Nothing contained in this subdivision shall prevent any religious corporation in existence on April fifteenth, eighteen hundred fifty-four, in any of said counties from using as heretofore any burial ground then belonging to it within such county. Such board or body, from time to time, may make such regulation as to burials in any cemetery in the county as the public health may require.

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

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§ 2. Paragraph (e) of section 1506 of the not-for-profit corporation law is amended by adding a new subparagraph 3 to read as follows:

(3) Notwithstanding the provisions of this section, and subject to section fifteen hundred six-d of this article, nothing herein shall prohibit the merger of cemetery corporations, regardless of proximity or the acreage of the lands held by such cemetery corporations. Any purchase, abandonment, or donation of real property to a cemetery corporation, or merger of cemetery corporations, that has occurred on or before January first, two thousand twenty, including any such transaction previously authorized or approved by the cemetery board shall be deemed to be duly ratified and shall not be subject to the additional provisions of this section or any further review by the cemetery board.

§ 3. Paragraph (h) of section 1506 of the not-for-profit corporation law, as added by chapter 871 of the laws of 1977, is amended to read as follows:

(h) Acquisition of property by condemnation. If the certificate of incorporation or by-laws of a cemetery corporation do not exclude any person, on equal terms with other persons, from the privilege of purchasing a lot or of burial in its cemetery, such corporation may, from time to time, acquire by condemnation, exclusively for the purposes of a cemetery, not more than two hundred acres of land in the aggregate, forming one continuous tract, wholly or partly within the county in which its certificate of incorporation is filed or recorded, except as in this section otherwise provided as to the counties of Erie, Nassau, Suffolk, Putnam, Kings, Queens, Rockland and Westchester. A cemetery corporation may acquire by condemnation, exclusively for the purposes of a cemetery, any real property or any interest therein necessary to supply water for the uses of such cemetery, and the right to lay, relay, repair and maintain conduits and water pipes with connections and fixtures, in, through or over the lands of others and the right to intercept and divert the flow of waters from the lands of riparian owners, and from persons owning or interested in any waters. But no such cemetery corporation shall have power to take or use water from any of the canals of this state, or any canal reservoirs as feeders, or any streams which have been taken by the state for the purpose of supplying the canals with water. A cemetery corporation may acquire, otherwise than by condemnation, real property [~~as aforesaid~~] **as outlined in this article for burial purposes** and additional real property[~~, not exceeding in value two hundred thousand dollars,~~] for the purposes of the convenient transactions of its business[~~, no portion of which shall be used for the purposes of a cemetery~~].

§ 4. The not-for-profit corporation law is amended by adding a new section 1506-d to read as follows:

§ 1506-d. Cemetery merger authorization.

(a) Upon application and approval by the cemetery board and in compliance with this article and article nine of this chapter, a cemetery corporation organized pursuant to this chapter or by general or special law or by special act of the legislature may merge with one or more other cemetery corporations located within a fifty mile radius of the principal place of business of the surviving cemetery corporation. Nothing in this section shall require, as a condition of any cemetery merger, that the cemetery property involved in such transaction be adjacent or contiguous property or be limited to a certain maximum number of total acres so long as the merging cemetery corporations demonstrate to the cemetery board that the resulting merged cemetery corporation will

have sufficient assets to maintain its cemetery properties and manage its operations.

(b) Upon application and approval by the cemetery board and in compliance with this article and article nine of this chapter, a cemetery corporation organized pursuant to this chapter or by general or special law or by special act of the legislature, which had, at the end of the preceding financial reporting year, ten million dollars or more in total financial assets, including all general funds, permanent maintenance funds, perpetual care funds, special trust funds and other restricted or unrestricted funds under the control of the cemetery corporation, regardless of the form in which they are held, may merge with one or more cemetery corporations located greater than a fifty mile radius from the principal place of business of the surviving cemetery corporation to create a single entity with multiple cemetery locations, regardless of the geographic distance between its cemetery locations or from the surviving cemetery corporation's principal place of business, so long as the surviving cemetery corporation provides the following to the cemetery board: (1) an outline of financial management controls that have been or will be implemented to accommodate multiple cemeteries operated at locations geographically distant from the surviving cemetery; (2) an outline of the total financial assets of each cemetery corporation to be merged demonstrating that the surviving cemetery will have sufficient financial resources to operate the merged cemeteries; (3) information regarding the location of all corporate and cemetery records of the merged cemeteries, as well as procedures for remote access to such records by all lot owners of the merged cemeteries; (4) a plan for providing remote maintenance and operations services to the merged cemeteries, including those that are geographically distant; (5) contact information, to be posted at the entrance to each merged cemetery and on any website maintained by the surviving cemetery, listing the contact information for the surviving cemetery; (6) procedures for conducting lot owners' meetings for remote merged cemeteries; and (7) procedures for providing notice to lot owners of all merged cemeteries of the place, date and hour of the annual meeting of the surviving cemetery, which notice shall be published in a newspaper located in each county in which any merged cemetery is physically located, shall be prominently posted on the homepage of any web site maintained by the surviving cemetery, and shall otherwise comply with section six hundred five of this chapter.

(c) Pursuant to section fifteen hundred five-a of this article the surviving cemetery corporation shall, if necessary, within ninety days after the consummation of any merger under this section, amend its certificate of incorporation to list each city, village or town, and county where any part of the surviving cemetery is or is proposed to be situated, and shall file such amended certificate of incorporation with the office of the county clerk of each applicable county.

(d) Nothing in this section shall prohibit a cemetery corporation from merging with a crematory operation, regardless of the location of the operation of such cemetery corporation. Any purchase, abandonment, or donation of real property to a cemetery corporation, or merger of cemetery corporations, that has occurred on or before January first, two thousand twenty, including any such transaction previously authorized or approved by the cemetery board shall be deemed to be duly ratified and shall not be subject to the additional provisions of section fifteen hundred six of this article or any further review by the cemetery board.

§ 5. This act shall take effect immediately.