

STATE OF NEW YORK

5347

2019-2020 Regular Sessions

IN ASSEMBLY

February 11, 2019

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 sacri-
7 fice 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, improve-
13 ment, 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 appro-
23 priate 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.~~

~~(c)~~ 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 subdivi-~~
56 ~~sion, 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.