

# STATE OF NEW YORK

1920

2021-2022 Regular Sessions

## IN ASSEMBLY

January 13, 2021

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

AN ACT to amend the executive law, in relation to 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. Subdivision 2 of section 365 of the executive law, as added  
2 by section 5 of part W of chapter 57 of the laws of 2013, the opening  
3 paragraph of paragraph (a) and the opening paragraph and clause 6 of  
4 subparagraph (ii) of paragraph (h) as amended by section 11 of part AA  
5 of chapter 56 of the laws of 2019 and paragraphs (b) and (g) as amended  
6 by a chapter of the laws of 2020, amending the executive law relating to  
7 costs associated with the establishment of New York state veterans'  
8 cemeteries, as proposed in legislative bills numbers S. 8791 and A.  
9 10782, is amended to read as follows:

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

11 (a) The director shall issue, on behalf of the division, a public  
12 request for information for any local government desiring to have the  
13 first state veterans cemetery located within its political subdivision.  
14 Such request shall specify the type of information to be provided,  
15 including, at a minimum, a detailed map of the site including potential  
16 transportation routes, the history of the site, the types of burials the  
17 site could accommodate, and the estimated number of veterans within a  
18 seventy-five mile radius of the site. Such requests for information  
19 shall be returnable to the division by no later than sixty days follow-  
20 ing the issuance of the requests for information. Requests for informa-  
21 tion issued by and returned to the division shall be publicly available  
22 and posted on the division's website.

23 (a-1) Following the deadline for the return of requests for informa-  
24 tion pursuant to paragraph (a) of this subdivision, the division, in  
25 cooperation with the United States department of veterans affairs, and

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

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1 in consultation with, and upon the support of the department of state  
2 division of cemeteries, is hereby directed to conduct an investigation  
3 and study on the issue of the construction and establishment of the  
4 first New York state veterans' cemetery. Such investigation and study  
5 shall include, but not be limited to:

6 (i) Potential site locations for such cemetery, with full consider-  
7 ation as to the needs of the veterans population; only locations within  
8 local governments that have submitted a request for information pursuant  
9 to paragraph (a) of this subdivision shall be considered and each such  
10 submission shall be considered;

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

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

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

15 (v) Costs for construction of the cemetery;

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

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

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

21 (ix) Cost of maintenance;

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

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

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

25 (xiii) Surrounding land use;

26 (xiv) Topography of the land;

27 (xv) Site characteristics;

28 (xvi) Cost of land acquisition;

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

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

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

43 (a-2) Upon the completion of the investigation and study, the results  
44 shall be provided to the selection committee. The selection committee  
45 shall consist of nine members as follows:

46 (i) The director of the division of veteran services, or his or her  
47 representative;

48 (ii) The director of the division of the budget, or his or her repre-  
49 sentative;

50 (iii) Three members appointed by the governor, two of whom shall be  
51 veterans;

52 (iv) Two members appointed by the temporary president of the senate,  
53 at least one of whom shall be a veteran; and

54 (v) Two members appointed by the speaker of the assembly, at least one  
55 of whom shall be a veteran.

1 (a-3) The selection committee shall be subject to articles six and  
2 seven of the public officers law. The selection committee shall evaluate  
3 the results of the study and, upon a majority vote, make a determination  
4 as to the location of the first state veterans' cemetery. In making this  
5 determination, the committee's consideration shall, at a minimum,  
6 include:

7 (i) The findings established by the study;

8 (ii) The submitted responses to the requests for information issued  
9 pursuant to paragraph (a) of this subdivision;

10 (iii) The guidelines for receipt of federal funding specified in 38  
11 USC 2408, 38 CFR 39, and any other relevant federal statute or regu-  
12 lation;

13 (iv) The possibility of funding from private individuals, corpo-  
14 rations, or foundations; and

15 (v) Any other consideration that would facilitate the successful oper-  
16 ation of the first state veterans' cemetery.

17 (b) The director of the division, the commissioner of the office of  
18 general services, and the chair of the division of cemeteries shall  
19 determine the amount of money necessary to fund the non-reimbursable  
20 costs of a state veterans' cemetery, such as operation and maintenance,  
21 for a period of not less than ten years, provided that such amount shall  
22 not include monies that would be recoverable by the cemetery pursuant to  
23 a charge of fee for the provision of a gravesite for a non-veteran  
24 spouse or eligible dependent. Prior to submitting any application for  
25 funding from the government of the United States in accordance with the  
26 grant requirements specified in 38 USC 2408, 38 CFR 30, and other rele-  
27 vant federal statutes or regulations, for the purpose of seeking funds  
28 to support the construction, establishment, expansion, improvement,  
29 support, operation or maintenance of New York state's veterans' ceme-  
30 teries, the director of the [department of state's division of ceme-  
31 teries,] division of the budget and the office of the state comptroller  
32 must certify to the governor, the temporary president of the senate, the  
33 speaker of the assembly, the chair of the senate finance committee and  
34 the chair of the assembly ways and means committee that [at the  
35 commencement of the application process pursuant to paragraph (c) of  
36 this subdivision there are moneys sufficient, adjusted to reflect  
37 projected future inflation, to fund the non-reimbursable costs related  
38 to future operation and maintenance of a state veterans' cemetery for a  
39 period of not less than ten years, provided that such amount shall not  
40 include any amount that would be recoverable by the cemetery pursuant to  
41 a charge of fee for the provision of a grave site for a non-veteran  
42 spouse or family member] there are sufficient funds to cover such  
43 amount; provided further that such moneys may include the veterans  
44 remembrance and cemetery maintenance and operation fund created pursuant  
45 to section ninety-seven-mmmmm of the state finance law. In making such a  
46 certification, [~~the director of the division of veterans' services,~~] the  
47 director of the division of the budget[, ~~the director of the department~~  
48 ~~of state's division of cemeteries,~~] and the office of the state comp-  
49 troller shall consider, but are not limited to, the following factors:

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

52 (ii) staffing costs, cost of equipment and equipment maintenance, and  
53 security costs;

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

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

3 (v) any other non-reimbursable fiscal cost, charge or assessment that  
4 would be incurred by the cemetery.

5 ~~(c) [By no later than ninety days following the issuance of the  
6 report, pursuant to the rules and regulations issued under paragraph (h)  
7 of this subdivision, the director shall issue, on behalf of the divi-  
8 sion, a request for proposals for any local government desiring to have  
9 the first state veterans cemetery located within its political subdivi-  
10 sion. Such request for proposals shall be returnable to the division by  
11 no later than sixty days following the issuance of the request for  
12 proposals.]~~

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

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

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

23 ~~(iii) The guidelines for receipt of federal funding specified in  
24 section 2408 of title 38 of the United States code, part 39 of title 38  
25 of the code of federal regulations, and any other relevant federal stat-  
26 ute or regulation;~~

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

29 ~~(v) Any other consideration that would facilitate the successful oper-  
30 ation of the first New York state veterans cemetery.]~~

31 (e) No] Once the certification that there are sufficient funds pursu-  
32 ant to paragraph (b) of this subdivision has been made, and no later  
33 than thirty days following the selection of the site pursuant to para-  
34 graph [~~(d)~~] (a-3) of this subdivision, the director, in consultation  
35 with the management board of the first New York state veterans cemetery,  
36 shall commence the application process for funding from the government  
37 of the United States, in accordance with the grant requirements speci-  
38 fied in section 2408 of title 38 of the United States code, part 39 of  
39 title 38 of the code of federal regulations, and any other relevant  
40 federal statute or regulation, for the purpose of seeking funds to  
41 support the construction, establishment, expansion, improvement,  
42 support, operation, maintenance and the provision of perpetual care of  
43 New York state's first veterans cemetery. Such grant application shall  
44 be based on a site selected pursuant to paragraph [~~(d)~~] (a-3) of this  
45 subdivision, and shall be consistent with the guidelines for receipt of  
46 federal funding pursuant to the relevant provisions of federal law.

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

50 ~~[(g) Nothing in this section shall be construed to authorize the divi-  
51 sion of veterans' services to submit any application for funding from  
52 the government of the United States in accordance with the grant  
53 requirements specified in section 2408 of title 38 of the United States  
54 code, part 30 of title 38 of the code of federal regulations, and other  
55 relevant federal statutes or regulations, for the purpose of seeking  
56 funds to support the construction, establishment, expansion, improve-~~

~~ment, support, operation, or maintenance of New York state's veterans cemetery pursuant to paragraph (c) of this subdivision until the completion of the certification pursuant to paragraph (b) of this subdivision.~~

~~(h)]~~ (e) 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;

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

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

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

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

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

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

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

21 (10) Guidelines and standards for the practices and procedures for the  
22 construction and establishment of a state veterans cemetery, including  
23 contracting and purchasing for construction services, professional  
24 services, legal services, architectural services, consulting services,  
25 as well as the procurement of materials, all consistent with the rele-  
26 vant provisions of federal, state and local law, the regulations promul-  
27 gated thereunder, and the requirements contained in the grants awarded  
28 or pursued from the federal government, or any source of private fund-  
29 ing;

30 (11) Guidelines and standards for the practices and procedures for the  
31 expansion and improvement of a state veterans cemetery, including  
32 contracting and purchasing for construction services, professional  
33 services, legal services, architectural services, consulting services,  
34 as well as the procurement of materials, all consistent with the rele-  
35 vant provisions of federal, state and local law, the regulations promul-  
36 gated thereunder, and the requirements contained in the grants awarded  
37 or pursued from the federal government, or any source of private fund-  
38 ing;

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

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

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

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

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

7 ~~(4)~~ (2) That the state veterans cemetery, and all the property upon  
8 which it resides shall be owned in fee simple absolute by the state of  
9 New York;

10 ~~(5)~~ (3) That all lands upon which such cemetery is constructed and  
11 established shall be used solely for state veterans cemetery purposes,  
12 and for the purpose of providing the honor and remembrance of veterans  
13 and their service through ceremonies and programs;

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

27 ~~(7)~~ (4) Such other and further requirements as the director may deem  
28 prudent in the facilitation of the successful siting and operation of a  
29 state veterans cemetery in the jurisdiction of the local government; and

30 (iii) Such other and further guidelines and standards as are necessary  
31 for the successful construction, establishment, expansion, improvement,  
32 support, operation, maintenance and the provision of perpetual care for  
33 a state veterans cemetery~~+~~.

34 ~~(i)~~ (f) Upon the approval of the application for funding from the  
35 government of the United States, made pursuant to paragraph ~~(e)~~ (c) of  
36 this subdivision, the director, upon consultation with the management  
37 board, shall commence the process of construction and establishment of  
38 the first state veterans cemetery. Such process shall be consistent with  
39 the relevant provisions of local, state and federal law, and the rules  
40 and regulations established pursuant to paragraph (h) of this subdivi-  
41 sion.

42 § 2. This act shall take effect on the same date and in the same  
43 manner as a chapter of the laws of 2020, amending the executive law  
44 relating to costs associated with the establishment of New York state  
45 veterans' cemeteries, as proposed in legislative bills numbers S. 8791  
46 and A. 10782, takes effect.