STATE OF NEW YORK

6971

2021-2022 Regular Sessions

IN ASSEMBLY

April 19, 2021

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 leasing of cemetery lands

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

Section 1. Legislative findings and declarations. The legislature finds and declares that the state has a vital interest in the public service that public cemeteries provide and in their viability as not-for-profit entities. Many cemeteries face falling demand for traditional burial services and other financial pressures. It is therefore necessary for the state to provide greater flexibility for cemeteries to generate income to prevent their operational failure and abandonment to local governments and impacts on the state fiscal plan, while simultaneously protecting the interests of cemetery lot owners and visitors. It is in the public interest that cemeteries with surplus land are able to receive income from such land for a period of time without altering the purpose of public cemeteries or negatively impacting the operation of the cemetery and the use of cemetery land. The following provisions are enacted to grant such cemeteries the ability to lease a portion of their land and use the income for the maintenance and preservation of the cemetery, to ensure that through leasing cemeteries themselves do not engage in non-cemetery activity, and to protect the public interest in land dedicated to cemetery purposes.

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

§ 1506-e. Lease of cemetery lands.

(a) Cemetery board approval. Except as set forth in paragraph (i) of this section, no cemetery corporation shall lease any portion of its land without notice to and approval of the cemetery board.

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

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(b) Requirements for approval of a lease of cemetery land. The application to the cemetery board for approval to lease cemetery land shall meet the following requirements:

(1) The cemetery's lot owners or board of directors have approved the lease.

(2) If the cemetery has any existing leases of land, it must disclose them so the board can consider the impact of existing leases on cemetery operations.

(3) In addition to its submission to the cemetery board, the cemetery corporation shall, no earlier than ten days prior to such submission, post notices in the immediate proximity of the land proposed to be leased, the cemetery office and, in a manner so as not to violate local zoning ordinances or to create a traffic hazard, all entrances. Each such notice shall provide information written in plain English concerning the proposed lease and, if the proposed lease includes construction of new structures or buildings, include a drawing, which shall be an accurate rendition of the proposed construction. In addition, such notices shall state the telephone number and address where comments may be received and the last date on which such comments will be accepted, which shall be no earlier than sixty days following the date the notices are posted.

(4) The proposed lease has been negotiated at arm's length for a fair market rent and contains all of the agreements between the parties. Where the proposed lease would be a related party transaction under this chapter, the cemetery shall disclose this fact and demonstrate compliance with restrictions related to such transactions, as set forth in section seven hundred fifteen of this chapter, and the cemetery board may require that the lease contain a clause by which the cemetery board may set reasonable reporting requirements that would disclose any financial relationship between the lessor and lessee related to the leased property.

(5) The initial lease term is not greater than forty-nine years, and the cemetery demonstrates that such a term will not interfere with land needed for burial purposes. Notwithstanding the provisions of this subparagraph, the cemetery board may approve a lease with extensions of the initial term not to exceed ninety-nine years from the date of the initial lease, provided that the security shall be updated at year forty-nine and every twenty years afterward during the term of the lease and all extensions thereof, if applicable, and approved pursuant to paragraph (h) of this section.

(6) If the proposed lease involves land adjacent to cemetery operations, the proposed lease requires the tenant to construct and maintain a physical or visual buffer approved by the cemetery board, which may be vegetative, and that protects visitors to the cemetery, and that otherwise complies with the requirements of this section.

(7) The proposed lease requires the tenant to be responsible for any and all taxes, assessments, and charges related to its occupancy and use of the land, whether imposed against the tenant or the cemetery corporation.

(8) If the proposed lease includes permission to construct any infrastructure, buildings or other structures, the application to the cemetery board shall provide for the removal of such infrastructure, buildings or other structures after the cemetery retakes possession of the land, unless the infrastructure, buildings or other structures are to be retained by the cemetery pursuant to paragraph (f) of this section.

(9) The proposed lease shall include an agreement to pay for the removal of any proposed infrastructure, buildings and structures, except any that are approved to be retained as set forth in paragraph (f) of this section, and return the land to a condition suitable for cemetery use upon the expiration or termination of the lease and such agreement shall be secured by a fund, bond, letter of credit or other security sufficient to pay for such future removal. The application shall include a written description of the proposed funding mechanism for the establishment of a fund, written evidence of a bond, or other security to the cemetery board for payment of the cost of restoring the leased premises to a condition suitable for use for cemetery purposes at the end or earlier termination of the term of the lease, including but not limited to the cost of removing any and all buildings and structures that may then be located on the leased premises and will not be retained. Any such bond shall be issued by an entity authorized to do business in the state of New York, and any irrevocable letter of credit or a certificate of deposit shall be from a New York state or federally chartered bank, trust company, savings bank or savings and loan association that is qualified to do business in the state of New York and insured by the federal deposit insurance corporation.

(10) The land proposed to be leased will not be used for any activity that would be disruptive to cemetery operations or that would have a significant impact on cemetery traffic.

(11) If the proposed use or activity arising therefrom could disturb normal and usual cemetery activities, the proposed lease limits the hours of activity.

(12) The proposed lease will not include the manufacture or disposal of hazardous material or the use or storage of hazardous material in violation of any law or otherwise create a significant risk of environmental harm to the cemetery property.

(13) The proposed lease may permit assignment or sub-leases, including sub-leasing and assignment of space on cell towers to communications providers, provided the original lease remains in effect and the use remains the same.

(c) The following uses are deemed to comply with subparagraph ten of paragraph (b) of this section:

(1) Communications service facilities, also known as cell towers;

(2) Solar panels; and

(3) Energy storage equipment, as defined in section four hundred ninety-nine-aaaa of the real property tax law.

(d) For any lease involving related party transactions pursuant to section seven hundred fifteen of this chapter, the cemetery board may set reasonable reporting requirements that would disclose any financial relationship between the lessor and lessee related to the leased property.

(e) Any material modification, alteration or expansion of the lease or additions of any infrastructure, structures or buildings outside the scope of the prior approval requires cemetery board approval.

(f) If the cemetery corporation intends that any infrastructure, structures or buildings proposed under the lease be retained and used for cemetery purposes after the lease terminates or expires, the application to approve the lease shall also include an application for approval of such infrastructure, structures or buildings as intended to be used by the cemetery. The board shall render decision on the application for a major alteration in conjunction with the decision on the application to lease cemetery land. If that application is approved,

such infrastructure, buildings or structures shall be excluded from the requirements of subparagraph nine of paragraph (b) of this section.

(g) The application shall include at least two written estimates of the cost of removing the infrastructure, buildings and structures excluding retained infrastructure and associated structures and returning the land to a condition suitable for burial purposes at the conclusion of the lease.

(h) (1) The cemetery board shall approve the type and amount of the security which shall be maintained in full force and effect, in an amount not less than that which was approved by the cemetery board, until: (i) the leased premises shall have been restored to a condition suitable for use for cemetery purposes at the end or earlier termination of the term of the lease, (ii) any and all buildings and structures then located on the leased premises shall have been removed, (iii) proof in form acceptable to the cemetery board demonstrating that all costs of such restoration and removal work have been paid in full and that no person or entity performing labor or furnishing materials for such work has filed a notice of mechanic's lien that shall have been delivered to the cemetery board, provided however that a cemetery may contest such lien as long as such contest prevents the foreclosure of a lien, and (iv) if applicable, each governmental unit or agency that issued any permit for such restoration and removal work shall have issued a certificate of compliance or other similar instrument indicating that such work has been completed in a due and proper manner. The parties directed to perform the restoration and removal work contemplated by this paragraph and as approved by the cemetery board shall not be limited by the amount of the bond, letter of credit, or certificate of deposit or by any inability to recover all or any part of such bond, letter of credit, or certificate of deposit from the issuing surety, bank, trust company, savings bank, or savings and loan association. Neither the cemetery board nor the department of state shall be liable to the tenant, the cemetery, or any other person or entity by reason or any determination or approval made under this paragraph.

(2) Prior to the commencement of construction, the cemetery shall submit proof to the cemetery board that such security in such amount is in place.

(i) Leases for the following uses do not require cemetery board approval:

(1) A lease or license to grow and harvest crops with a term less than five years;

(2) A lease of a dwelling to the caretaker or other officer or employee of the cemetery that is actually used and occupied as that person's residence; and

(3) A renewal or assignment of an existing lease of existing structures on land owned by the cemetery, not dedicated to cemetery purposes and that was subject to a lease, provided that such purchase or acquisition was approved by a court or the cemetery board, if such renewal does not change the scope of the existing lease.

(j) All lease payments and other consideration received by the cemetery corporation, less the necessary expenses incurred, shall be deposited into the permanent maintenance fund established by the cemetery corporation pursuant to paragraph (a) of section fifteen hundred seven of this article, except that upon a showing of a need to fund specific projects, maintain and preserve, or expand current cemetery operations, the cemetery board may permit any portion of the lease payments or other

consideration to be used for such purposes, with the remainder to be deposited to the permanent maintenance fund.

§ 3. Notwithstanding any provision of law to the contrary, a lease of cemetery land that was entered into prior to the effective date of this act may continue under the terms and conditions and for the period of time set forth in the lease as of such effective date, including any right of renewal, unless the cemetery did not obtain cemetery board approval.

§ 4. This act shall take effect immediately.