STATE OF NEW YORK

3264

2021-2022 Regular Sessions

IN SENATE

January 28, 2021

Introduced by Sen. COMRIE -- read twice and ordered printed, and when printed to be committed to the Committee on Corporations, Authorities and Commissions

AN ACT to amend the not-for-profit corporation law, in relation to cemetery trust funds

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

Section 1. Subparagraph 2 of paragraph (a) of section 1507 of the not-for-profit corporation law, as amended by chapter 509 of the laws of 2014, is amended to read as follows:

(2) The permanent maintenance fund is hereby declared to be and shall be held by the corporation as a trust fund, for the purpose of maintaining and preserving the cemetery, including all lots, crypts, niches, plots, and parts thereof. The principal of such fund shall be invested in such securities as are permitted for the investment of trust funds by section 11-2.3 of the estates, powers and trusts law. The income in the form of interest and ordinary dividends therefrom shall be used solely for the maintenance and preservation of the cemetery grounds. [~~In addition, the governing board of the corporation may appropriate for expenditure solely for the maintenance and preservation of the cemetery grounds a portion of the net appreciation, in the fair market value of the principal of the trust, as is prudent under the standard established by article five-A of this chapter, the prudent management of institutional funds act. In the event that a cemetery corporation seeks to appropriate any percentage of its net appreciation in its permanent maintenance fund in accordance with this subparagraph, the cemetery corporation shall provide notice of such proposed appropriation by certified mail to the cemetery board not less than sixty days in advance of such proposed appropriation and shall disclose such appropriation as part of and in addition to their annual reporting requirements as defined in section fifteen hundred eight of this article, setting forth~~

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

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~~the amount of funds to be appropriated for such expenditure and its effect on the permanent maintenance fund. Such proposed appropriation shall become effective sixty days after receipt of such notice, unless the cemetery board within such sixty-day period notifies the cemetery corporation that the board objects to the proposed appropriation. Notwithstanding the foregoing provisions of this subparagraph, all principal of the permanent maintenance fund shall remain inviolate, except that, upon application to the supreme court in a district where a portion of the cemetery grounds is located, the court may make an order permitting the principal or a part thereof to be used for the purpose of current maintenance and preservation of the cemetery or otherwise.~~] In addition, in any year, the governing board of a qualified corporation, as defined below, may appropriate for expenditure solely for the maintenance and preservation of the cemetery grounds, and treat as income for all purposes, an amount of trust principal equal to the excess, if any, of a percentage of the fair market value of the principal of the trust, as of the last day of the cemetery's immediately preceding fiscal year, as is prudent under the standard established by article five-A of this chapter, the prudent management of institutional funds act over interest and ordinary dividends received in such year; provided, however, that an appropriation of an amount (the safe harbor amount) of trust principal equal to the excess of up to four percent of the fair market value of the principal of the trust, as of the last day of the cemetery's immediately preceding fiscal year over interest and ordinary dividends received in such year shall be deemed to be prudent in all events. A "qualified corporation" means a cemetery corporation which adopts a written investment policy setting forth guidelines on investments and delegation of management and investment functions in accord with the standards of article five-A of this chapter. If a cemetery corporation seeks to appropriate any percentage of the principal of the permanent maintenance fund in accordance with this subparagraph, the cemetery corporation shall provide notice of such proposed appropriation and provide a copy of its written investment policy by certified mail to the cemetery board not less than sixty days in advance of such proposed appropriation and shall disclose such appropriation as part of and in addition to their annual reporting requirements as defined in section fifteen hundred eight of this article, setting forth the amount of principal to be appropriated for such expenditure and its effect on the permanent maintenance fund. Such proposed appropriation shall become effective sixty days after receipt of such notice, unless the proposed appropriation exceeds the safe harbor amount or the written investment policy is not provided or is not prepared in accordance with the standards of article five-A of this chapter, and the cemetery board within such sixty-day period notifies the cemetery corporation that the board objects to the proposed appropriation. Except to the extent that principal is utilized as the result of the foregoing, all principal of the permanent maintenance fund shall remain inviolate, with the further exception that, upon application to the supreme court in a district where a portion of the cemetery grounds is located, the court may make an order permitting the principal or a part thereof to be used for the purpose of current maintenance and preservation of the cemetery or otherwise. Such application may be made by the cemetery board on notice to the corporation or by the corporation on notice to the cemetery board. Unless the cemetery can clearly demonstrate that it lacks sufficient future revenue to make repayment, any such allowance from the permanent maintenance fund shall be in the form of a loan, and the court

shall determine the method for repayment of such a loan by the cemetery to the fund.

§ 2. Subparagraph 2 of paragraph (c) of section 1507 of the not-for-profit corporation law, as amended by chapter 509 of the laws of 2014, is amended to read as follows:

(2) The principal of such funds, whether kept in the perpetual care fund or otherwise, and unless already so invested when received, shall be invested within a reasonable time after receipt thereof, and kept invested, in such securities as are permitted for the investment of trust funds by sections 11-2.2 and 11-2.3 of the estates, powers and trusts law. The income arising therefrom shall be used solely for the perpetual care and maintenance of the lot or plots or parts thereof for which such income has been provided. [~~In addition, the governing board of the corporation may appropriate for expenditure solely for the perpetual care and maintenance of the lot or plots or parts thereof for which such income has been provided, a portion of the net appreciation in the fair market value of the principal of the trust as is prudent under the standard established by article five-A of this chapter, the prudent management of institutional funds act. In the event that a cemetery corporation seeks to appropriate any percentage of its net appreciation in its perpetual care fund in accordance with this subparagraph, the cemetery corporation shall provide notice of such appropriation to the cemetery board not less than sixty days in advance of such proposed appropriation and shall disclose such appropriation as part of and in addition to their annual reporting requirements as defined in section fifteen hundred eight of this article setting forth the amount of funds appropriated for such expenditure and its effect on the perpetual care funds. Such proposed appropriation shall become effective sixty days after receipt of such notice, unless the cemetery board within such sixty day period notifies the cemetery corporation that the board objects to the proposed appropriation.~~] In addition, in any year, the governing board of a qualified corporation, as defined below, may appropriate for expenditure solely for the maintenance and preservation of the cemetery grounds, and treat as income for all purposes, an amount of trust principal equal to the excess, if any, of a percentage of the fair market value of the principal of the trust, as of the last day of the cemetery's immediately preceding fiscal year, as is prudent under the standard established by article five-A of this chapter, the prudent management of institutional funds act over interest and ordinary dividends received in such year; provided, however, that an appropriation of an amount (the safe harbor amount) of trust principal equal to the excess of up to four percent of the fair market value of the principal of the trust, as of the last day of the cemetery's immediately preceding fiscal year over interest and ordinary dividends received in such year shall be deemed to be prudent in all events. A "qualified corporation" means a cemetery corporation which adopts a written investment policy setting forth guidelines on investments and delegation of management and investment functions in accord with the standards of article five-A of this chapter. If a cemetery corporation seeks to appropriate any percentage of the principal of the perpetual care fund in accordance with this subparagraph, the cemetery corporation shall provide notice of such proposed appropriation and provide a copy of its written investment policy by certified mail to the cemetery board not less than sixty days in advance of such proposed appropriation and shall disclose such appropriation as part of and in addition to their annual reporting requirements as defined in section fifteen hundred eight of this article,

setting forth the amount of principal to be appropriated for such expenditure and its effect on the perpetual care fund. Such proposed appropriation shall become effective sixty days after receipt of such notice, unless the proposed appropriation exceeds the safe harbor amount or the written investment policy is not provided or is not prepared in accordance with the standards of article five-A of this chapter, and the cemetery board within such sixty-day period notifies the cemetery corporation that the board objects to the proposed appropriation.

§ 3. This act shall take effect immediately.