STATE OF NEW YORK

896

2021-2022 Regular Sessions

IN SENATE

(Prefiled)

January 6, 2021

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

AN ACT to amend the not-for-profit corporation law, in relation to requiring consent prior to the merger of cemetery corporations; and repealing certain provisions of such law relating thereto

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

Section 1. Paragraph (a) of section 1506 of the not-for-profit corporation law, as amended by chapter 539 of the laws of 2015, is amended to read as follows:

(a) Purchase of land; notice to cemetery board. (1) No cemetery corporation, in purchasing real property hereafter, shall pay or agree to pay more than the fair and reasonable market value thereof. The terms of the purchase, including the price to be paid and the method of payment, shall be subject to notice and approval of the cemetery board. In determining the fair and reasonable market value, the cemetery board may take into consideration the method by which the purchase price is to be paid.

(2) Notwithstanding the restrictions set forth in subparagraph three of paragraph (h) of this section, a cemetery corporation may purchase real property for cemetery purposes that is not adjacent to existing cemetery property or that would result in the cemetery corporation owning more than two hundred acres of land in the aggregate upon proving to the satisfaction of the cemetery board:

i. that the proposed purchase will benefit the cemetery corporation and the owners of plots and graves in the cemetery;

ii. that the cemetery has sufficient funds and sufficient ability to take on any debt required by the proposed terms of purchase;

iii. that the cemetery corporation fully investigated available land in reasonable proximity to its existing cemetery and that the proposed purchase is prudent, taking into consideration the proximity of the land

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

LBD07190-01-1

to the existing cemetery, the quantity of land, the proposed purchase price, and if applicable, the number of lot sales and income the land is reasonably expected to generate, and the future needs of the cemetery; and

iv. that the municipalities that would be required to assume the care and control of any part of the cemetery if the cemetery corporation were to be abandoned have been notified of the proposed purchase.

§ 2. Paragraph (c) of section 1506 of the not-for-profit corporation law, as amended by a chapter of the laws of 2020 amending the not-for-profit corporation law relating to requiring consent prior to the merger of cemetery corporations, as proposed in legislative bills numbers S. 7155 and A.9089, 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. 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 that such limitation shall not apply in the event of a merger of cemetery corporations~~] unless the acquisition is by an abandonment pursuant to section fifteen hundred six-c of this article or a merger or consolidation of cemetery corporations pursuant to article nine of this chapter that complies with the additional requirement of section fifteen hundred six-d of this article, except that such limitation shall not apply to paragraph (n) of this section and the provisions of subparagraph two of paragraph (a) of this section. 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.

§ 3. Paragraph (d) 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:

(d) Limitation on the acquisition of land by rural cemetery corporations. It shall not be lawful for any rural cemetery corporation hereafter to acquire or take by deed, devise or otherwise, any land in any county within the state of New York, having a population of between one hundred [~~and~~] seventy-five thousand and two hundred thousand, according to the federal census of nineteen hundred, or set apart any ground for cemetery purposes therein, where there has already been set apart in any such county, five hundred acres of land for rural cemetery purposes, and the consent of the board of supervisors of any such county

shall not be granted where there has already been granted five hundred acres of land, or upwards, within such county, to rural cemetery corporations **unless the acquisition is by an abandonment pursuant to section fifteen hundred six-c of this article or a merger or consolidation of cemetery corporations pursuant to article nine of this chapter that complies with the additional requirements of section fifteen hundred six-d of this article**. [~~**But nothing**~~] **Nothing** herein contained shall affect any lawful consent or grant hitherto made by the board of supervisors of any such county.

§ 4. Subparagraph 1 of paragraph (e) 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:

(1) It shall not be lawful for any corporation, association or person hereafter to set aside or use for cemetery purposes any lands in any county within the state erected on and after January first, eighteen hundred ninety, adjoining a city of the first class and having a population of between eighty thousand and eighty-five thousand according to the federal census of nineteen hundred ten; but nothing herein contained shall prevent cemetery corporations formed prior to January first, nineteen hundred seventeen, which own in such county a cemetery in which burials have been made prior to such date, from setting apart and using for burial purposes lands lying contiguous or adjacent to such cemetery which lands have been heretofore acquired by a recorded deed of conveyance made to such a cemetery corporation either for burial purposes, or for the purposes of the convenient transaction of its general business, which lands shall have been acquired with the consent of the board of supervisors; nor to prohibit the dedication or use of land within such county for a family cemetery as provided in [~~**subdivision**~~] **paragraph** (c) of section fourteen hundred one of this chapter. **Nothing herein contained shall prohibit a cemetery corporation from assuming management and maintenance of an abandoned cemetery pursuant to section fifteen hundred six-c of this article or a merger or consolidation of cemetery corporations pursuant to article nine of this chapter that complies with the additional requirements of section fifteen hundred six-d of this article.**

§ 5. Subparagraph 3 of paragraph (e) of section 1506 of the not-for-profit corporation law, as added by a chapter of the laws of 2020 amending the not-for-profit corporation law relating to requiring consent prior to the merger of cemetery corporations, as proposed in legislative bills numbers S.7155 and A. 9089, is REPEALED.

§ 6. Paragraph (h) of section 1506 of the not-for-profit corporation law, as amended by a chapter of the laws of 2020 amending the not-for-profit corporation law relating to requiring consent prior to the merger of cemetery corporations, as proposed in legislative bills numbers S. 7155 and A. 9089, is amended to read as follows:

(h) Acquisition of property by condemnation **or otherwise**. **(1)** 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.

(2) 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.

(3) A cemetery corporation may acquire, otherwise than by condemnation, real property [~~as outlined in this article for burial purposes~~] exclusively for the purposes of a cemetery as aforesaid in subparagraph 1 of this paragraph and additional real property for the purposes of the convenient transactions of its business, no portion of which shall be used for the purposes of a cemetery. Notwithstanding the foregoing or any other provision of law to the contrary, a cemetery corporation that holds real property for cemetery purposes that exceeds two hundred acres in the aggregate or that does not form one continuous tract as a result of acquisitions of real property that occurred prior to the effective date of the chapter of the laws of two thousand twenty which amended this paragraph and for which all approvals and consents required at the time to acquire such real property were obtained, may continue to use such real property for cemetery purposes.

§ 7. Section 1506-d of the not-for-profit corporation law, as added by a chapter of the laws of 2020 amending the not-for-profit corporation law relating to requiring consent prior to the merger of cemetery corporations, as proposed in legislative bills numbers S. 7155 and A. 9089, is REPEALED.

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

§ 1506-d. Additional requirements for merger or consolidation of cemetery corporations in certain circumstances. (a) A merger or consolidation of cemetery corporations may be approved notwithstanding that the surviving corporation or consolidated corporation will own land that does not form one continuous tract or that exceeds two hundred acres in the aggregate, but only with the recommendation of the cemetery board. The cemeteries proposing such a merger or consolidation shall first prove to the satisfaction of the cemetery board that:

(1) the plan of merger or consolidation is economically feasible and financially responsible;

(2) the merger or consolidation does not harm the interests of each cemetery corporation, their lot owners, the communities in which the constituent cemeteries are located, or the state;

(3) the surviving or consolidated corporation will have the resources, ability and commitment of directors and officers to ensure that all the constituent cemeteries are properly operated and maintained, that they will not fall into disrepair and dilapidation and become a burden upon the community, that they will be operated for the mutual benefit of lot owners, and that they will continue to serve the local communities in which they are located;

(4) the municipalities which would be required to assume the care and control of any part of the cemetery if the surviving or consolidated cemetery corporation were to be abandoned have been notified of the proposed merger or consolidation; and

(5) the plan of merger or consolidation submitted to the cemetery board shall include the following:

(i) a description of the financial assets of each constituent cemetery corporation demonstrating that the surviving or consolidated cemetery will have sufficient financial resources to operate all locations subsequent to merger or consolidation;

(ii) a proposal for management of financial assets of the surviving or consolidated cemetery, including management of trust funds of the constituent cemeteries;

(iii) a proposal for maintenance, storage and availability of all corporate and cemetery records of the surviving or consolidated cemetery including procedures for physical or remote access to such records by persons entitled to access;

(iv) a proposal for maintenance, storage and availability of all corporate and cemetery records relating to the constituent cemeteries, including procedures for physical or remote access to such records by persons entitled to access;

(v) a plan for maintenance and operation of all locations in an equitable manner;

(vi) an agreement that contact information for the surviving or consolidated cemetery will be posted at the entrance to each location of the surviving or consolidated cemetery and on any website maintained by it;

(vii) a proposal for the conduct of annual and special lot owner meetings that permits lot owners who were lot owners of a constituent cemetery to attend, actively participate in, and vote at such meetings remotely; and

(viii) a proposal for providing notice to lot owners who were lot owners of a constituent cemetery of the place, date and hour of the annual and any special lot owner meetings in compliance with section six hundred five of this chapter, and that also provides for: notice to be published in a newspaper located in each county in which any constituent cemetery was located, and notice to be prominently posted on the homepage of any website maintained by the surviving or consolidated cemetery.

(b) In addition to the requirements of section nine hundred three of this chapter, lot owner approval of the plan of merger or consolidation must meet these requirements:

(1) Notice of the meeting to lot owners by a constituent cemetery corporation that will not be a surviving cemetery corporation may not be served by publication, unless the constituent cemetery demonstrates that notice by means other than publication would cause undue hardship;

(2) Additional notice of the meeting shall be conspicuously posted at the cemetery at least sixty days prior to the meeting and shall provide the name, telephone number and address of a person from whom a copy of the plan of merger or consolidation may be obtained; and

(3) Additional notice of the meeting, along with the plan of merger or consolidation or an outline of the material features of the plan, shall be conspicuously posted, by each constituent corporation, on any website it maintains or through which it conducts business.

(c) The cemetery board may adopt rules and regulations as are necessary to carry out the purposes and provisions of this section.

§ 9. The provisions of sections one through eight of this act shall apply to plans of merger or consolidation submitted to the cemetery board on or after the effective date of this act.

§ 10. This act shall take effect on the same date and in the same manner as a chapter of the laws of 2020 amending the not-for-profit corporation law relating to requiring consent prior to the merger of cemetery corporations, as proposed in legislative bills numbers S. 7155 and A. 9089, takes effect.