STATE OF NEW YORK

1477

2023-2024 Regular Sessions

IN ASSEMBLY

January 17, 2023

Introduced by M. of A. BUTTENSCHON -- 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 authorizing the maintenance of abandoned cemeteries

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

Section 1. Paragraph (h) of section 1507 of the not-for-profit corporation law, as amended by chapter 380 of the laws of 2000 and subparagraph 4 as amended by chapter 363 of the laws of 2009, is amended to read as follows:

(h) Vandalism, abandonment and monument repair or removal. (1) Cemeteries incorporated under this article shall contribute to a fund created pursuant to section ninety-seven-r of the state finance law for the maintenance of abandoned cemeteries, including the construction of cemetery fences, placement of cemetery lights and replacement of cemetery doors and locks, for the restoration of property damaged by acts of vandalism, and for the repair or removal of monuments or other markers not owned by the cemetery corporation that have fallen into disrepair or dilapidation so as to create a dangerous condition. Such fund shall be administered by a board of trustees comprised of the secretary of state, the attorney general and the commissioner of health, or their designees, who shall serve without additional compensation.

(2) The fund shall be financed by contributions by the cemetery corporations of not more than five dollars ($5.00) per interment or cremation in a manner to be determined by the New York state cemetery board. No contributions shall be collected upon the interment of the cremains of a deceased person where a contribution was collected upon cremations.

(3) The moneys of the fund shall be expended equally for the maintenance of abandoned cemeteries previously owned by a corporation incorporated pursuant to this chapter or the membership corporations law and the repair of cemetery vandalism damage and the repair or removal of

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

LBD02762-01-3

monuments or other markers not owned by the cemetery corporation, provided, however, that the cemetery board may determine that circumstances necessitate an unequal distribution due to specific needs and may provide for such distribution. For purposes of this section, the maintenance of abandoned cemeteries may include the construction of cemetery fences, placement of cemetery lights**, removal of grass and weeds, demolition or restoration of any buildings or structures in disrepair, the refilling of graves, the repair or removal of monuments or other markers not owned by the cemetery corporation that have fallen into disrepair or dilapidation so as to create a dangerous condition,** and replacement of cemetery doors and locks. **For the purposes of this paragraph, the term "abandoned cemetery" may include cemeteries in imminent danger of abandonment as determined by the New York state cemetery board.**

(4) Authorization for payments by the fund for maintenance of an abandoned cemetery shall be made by the secretary of state only upon approval by the cemetery board of an application by a municipality or other solvent not-for-profit cemetery corporation**, or a solvent not-for-profit cemetery corporation that merges with an abandoned cemetery in a city pursuant to section fifteen hundred six-d of this article,** for fair and reasonable expenses required to be made by the municipality [~~or~~]**,** other solvent not-for-profit cemetery corporation for maintenance of an abandoned cemetery**, or a solvent not-for-profit cemetery corporation that merges with an abandoned cemetery in a city pursuant to section fifteen hundred six-d of this article**; provided, however, that the cemetery board shall not approve any such application unless the municipality [~~or~~]**,** other solvent not-for-profit cemetery corporation**, or solvent not-for-profit cemetery corporation that merges with an abandoned cemetery in a city pursuant to section fifteen hundred six-d of this article** acknowledges that the responsibility for restoration and future care, preservation, and maintenance of such cemetery has been assumed by the municipality or other solvent not-for-profit cemetery corporation**, or the solvent not-for-profit cemetery corporation that merges with an abandoned cemetery in a city pursuant to section fifteen hundred six-d of this article**. For the purposes of this paragraph, such cemetery shall always be deemed an abandoned cemetery.

(5) Authorization for payments by the fund for the repair of vandalism damage shall be made by the secretary of state only on approval by the New York state cemetery board which shall determine:

(i) that an act of vandalism to the extent described by the cemetery corporation did take place;

(ii) that either a written report of the vandalism was filed with the local police or sheriff's department, or, that the cemetery, upon consent of the division, made a determination not to file the report because the publicity generated by filing the report would have adverse consequences for the cemetery;

(iii) that the cost of repairs is fair and reasonable; and

(iv) that the cemetery corporation has been unable to obtain funds from the lot owner, his spouse, devisees or descendants within a reasonable period of time nor are there adequate funds in the cemetery corporations monument maintenance fund, if such a fund has been established by the cemetery.

(6) Authorization for payments by the fund for the repair or removal of monuments or other markers not owned by the cemetery corporation shall be made by the secretary of state only on approval by the New York state cemetery board on application by the cemetery corporation showing:

(i) that the monuments or markers are so badly out of repair or dilapidated as to create a dangerous condition;

(ii) that the cost of remedying the condition is fair and reasonable;

(iii) that the cemetery corporation has given not less than sixty days notice to the last known owner to repair or remove the monument or other marker and the said owner has failed to do so within the time prescribed in said notice.

(7) The New York state cemetery board shall promulgate rules defining standards of maintenance, as well as what type of vandalism or out of repair or dilapidated monuments or other markers shall qualify for payment of repair or removal by the fund and the method and amount of payment of contributions described in subparagraph two of this paragraph upon the recommendation of the state cemetery board citizens advisory council created by section fifteen hundred seven-a of this article (State cemetery board citizens advisory council). **The New York state cemetery board shall approve or deny any application made pursuant to this section no later than sixty days after receipt of a completed application.**

(8) Nothing contained in this paragraph is to be construed as giving a cemetery corporation an "insurable interest" in monuments or other embellishments on a plot, lot or part thereof, nor is it meant to imply that the cemetery corporation has any responsibility for repairing vandalism damage not covered by this fund, nor for repairing or removing out of repair or dilapidated monuments or other markers not owned by the cemetery corporation, nor shall it constitute the doing of an insurance business.

§ 2. Section 1506-d of the not-for-profit corporation law is amended by adding a new subdivision (d) to read as follows:

(d) Any cemetery corporation which assumes management and operation of a cemetery located in any city through merger as authorized by this section, shall be discharged from repayment of any payments due from the city cemetery to its own funds from previous operations and loans to itself including but not limited to any permanent maintenance fund loans.

§ 3. This act shall take effect immediately.