STATE OF NEW YORK

8551

IN ASSEMBLY

January 8, 2024

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 maintenance of abandoned cemeteries; and to repeal 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. Paragraphs (a), (b), and (c) of section 1506-c of the not-for-profit corporation law, as added by chapter 363 of the laws of 2009, are amended to read as follows:

(a) Upon application and approval by the cemetery board, a cemetery corporation may assume management and maintenance of an abandoned cemetery. For the purposes of this section, abandoned cemetery means a cemetery which was [~~previously owned by a cemetery corporation~~] organized pursuant to this chapter or existing by virtue of the membership corporation law, for which there no longer exists any corporate board or body to maintain it, and for which there is no sufficient trust fund or endowment to provide ordinary and necessary care and maintenance. Provided, however, that in no event shall the cemetery board approve the assumption of the management and maintenance of an abandoned cemetery under this section if the abandoned cemetery was affiliated with any religious denomination or tradition or if the majority of the persons whose bodies were interred in such cemetery were affiliated with any religious denomination or tradition unless the cemetery assuming the management and maintenance of such abandoned cemetery follows the customs and practices of the same religious denomination or tradition.

(b) A cemetery corporation assuming management and maintenance of an abandoned cemetery [~~shall~~] **may** make application for funds pursuant to paragraph (h) of section fifteen hundred seven of this article and section ninety-seven-r of the state finance law for maintenance of abandoned cemeteries. Within sixty days of submission of a completed application, the cemetery board shall approve or deny such application.

(c) Monies disbursed under such assumption shall be used exclusively for the purpose of the management and maintenance of an abandoned ceme-

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

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tery [~~such as the ordinary and necessary care of a cemetery, including the removal of grass and weeds, the refilling of graves, and the preservation, care, and fencing of a cemetery, and also including the care of crypts, niches, grave sites, monuments, and memorials paid for by means of the general fund or special fund or the income applied from the permanent maintenance fund, perpetual care fund, monument maintenance fund, general fund, or a special fund of the abandoned cemetery~~] **as provided in subparagraph three of paragraph (h) of section fifteen hundred seven of this article**.

§ 2. Subparagraph 2 of paragraph (a) and subparagraphs 1 and 3 of paragraph (h) of section 1507 of the not-for-profit corporation law, subparagraph 2 of paragraph (a) as amended by chapter 509 of the laws of 2014 and subparagraphs 1 and 3 of paragraph (h) as amended by a chapter of the laws of 2023 amending the not-for-profit corporation law relating to authorizing the maintenance of abandoned cemeteries, as proposed in legislative bills numbers S. 490 and A. 1477, are 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 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. 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. **If the cemetery clearly demonstrates it lacks sufficient future revenue to make**

repayment such allowance from the permanent maintenance fund shall be in the form of a grant that the cemetery is not required to repay into its permanent maintenance fund. A cemetery, including a surviving cemetery following a merger or consolidated cemetery following a consolidation, may seek a modification of the method of repayment, or conversion of a loan to a grant, if the cemetery can clearly demonstrate that the cemetery merged or consolidated into the surviving cemetery will not produce sufficient future revenue to make repayment under the existing loan.

(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.

(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 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 ordinary and necessary care of a cemetery, such as 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, and the care of crypts, niches, grave sites, monuments, and memorials paid for by means of the general fund or special fund or the income applied from the permanent maintenance fund, perpetual care fund or monument maintenance fund of the abandoned cemetery. 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.

§ 3. Subdivision (d) of section 1506-d of the not-for-profit corporation law, as added by a chapter of the laws of 2023 amending the not-for-profit corporation law relating to authorizing the maintenance of abandoned cemeteries, as proposed in legislative bills numbers S. 490 and A. 1477, is REPEALED.

§ 4. This act shall take effect on the same date and in the same manner as a chapter of the laws of 2023 amending the not-for-profit corporation law relating to authorizing the maintenance of abandoned cemeteries, as proposed in legislative bills numbers S. 490 and A. 1477, takes effect.