

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:

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

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

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

22 (3) The moneys of the fund shall be expended equally for the mainte-
23 nance of abandoned cemeteries previously owned by a corporation incorpo-
24 rated pursuant to this chapter or the membership corporations law and
25 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.

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1 monuments or other markers not owned by the cemetery corporation,
2 provided, however, that the cemetery board may determine that circum-
3 stances necessitate an unequal distribution due to specific needs and
4 may provide for such distribution. For purposes of this section, the
5 maintenance of abandoned cemeteries may include the construction of
6 cemetery fences, placement of cemetery lights, removal of grass and
7 weeds, demolition or restoration of any buildings or structures in
8 disrepair, the refilling of graves, the repair or removal of monuments
9 or other markers not owned by the cemetery corporation that have fallen
10 into disrepair or dilapidation so as to create a dangerous condition,
11 and replacement of cemetery doors and locks. For the purposes of this
12 paragraph, the term "abandoned cemetery" may include cemeteries in immi-
13 nent danger of abandonment as determined by the New York state cemetery
14 board.

15 (4) Authorization for payments by the fund for maintenance of an aban-
16 doned cemetery shall be made by the secretary of state only upon
17 approval by the cemetery board of an application by a municipality or
18 other solvent not-for-profit cemetery corporation, or a solvent not-for-
19 profit cemetery corporation that merges with an abandoned cemetery in a
20 city pursuant to section fifteen hundred six-d of this article, for fair
21 and reasonable expenses required to be made by the municipality [~~or~~],
22 other solvent not-for-profit cemetery corporation for maintenance of an
23 abandoned cemetery, or a solvent not-for-profit cemetery corporation
24 that merges with an abandoned cemetery in a city pursuant to section
25 fifteen hundred six-d of this article; provided, however, that the ceme-
26 tery board shall not approve any such application unless the munici-
27 pality [~~or~~], other solvent not-for-profit cemetery corporation, or
28 solvent not-for-profit cemetery corporation that merges with an aban-
29 doned cemetery in a city pursuant to section fifteen hundred six-d of
30 this article acknowledges that the responsibility for restoration and
31 future care, preservation, and maintenance of such cemetery has been
32 assumed by the municipality or other solvent not-for-profit cemetery
33 corporation, or the solvent not-for-profit cemetery corporation that
34 merges with an abandoned cemetery in a city pursuant to section fifteen
35 hundred six-d of this article. For the purposes of this paragraph, such
36 cemetery shall always be deemed an abandoned cemetery.

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

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

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

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

48 (iv) that the cemetery corporation has been unable to obtain funds
49 from the lot owner, his spouse, devisees or descendants within a reason-
50 able period of time nor are there adequate funds in the cemetery corpo-
51 rations monument maintenance fund, if such a fund has been established
52 by the cemetery.

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

1 (i) that the monuments or markers are so badly out of repair or dila-
2 pided as to create a dangerous condition;

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

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

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

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

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

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

35 § 3. This act shall take effect immediately.