

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:

1 Section 1. Paragraphs (a), (b), and (c) of section 1506-c of the not-
2 for-profit corporation law, as added by chapter 363 of the laws of 2009,
3 are amended to read as follows:

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

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

26 (c) Monies disbursed under such assumption shall be used exclusively
27 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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1 tery [~~such as the ordinary and necessary care of a cemetery, including~~
2 ~~the removal of grass and weeds, the refilling of graves, and the preser-~~
3 ~~vation, care, and fencing of a cemetery, and also including the care of~~
4 ~~crypts, niches, grave sites, monuments, and memorials paid for by means~~
5 ~~of the general fund or special fund or the income applied from the~~
6 ~~permanent maintenance fund, perpetual care fund, monument maintenance~~
7 ~~fund, general fund, or a special fund of the abandoned cemetery] as
8 provided in subparagraph three of paragraph (h) of section fifteen
9 hundred seven of this article.~~

10 § 2. Subparagraph 2 of paragraph (a) and subparagraphs 1 and 3 of
11 paragraph (h) of section 1507 of the not-for-profit corporation law,
12 subparagraph 2 of paragraph (a) as amended by chapter 509 of the laws of
13 2014 and subparagraphs 1 and 3 of paragraph (h) as amended by a chapter
14 of the laws of 2023 amending the not-for-profit corporation law relating
15 to authorizing the maintenance of abandoned cemeteries, as proposed in
16 legislative bills numbers S. 490 and A. 1477, are amended to read as
17 follows:

18 (2) The permanent maintenance fund is hereby declared to be and shall
19 be held by the corporation as a trust fund, for the purpose of maintain-
20 ing and preserving the cemetery, including all lots, crypts, niches,
21 plots, and parts thereof. The principal of such fund shall be invested
22 in such securities as are permitted for the investment of trust funds by
23 section 11-2.3 of the estates, powers and trusts law. The income in the
24 form of interest and ordinary dividends therefrom shall be used solely
25 for the maintenance and preservation of the cemetery grounds. In addi-
26 tion, the governing board of the corporation may appropriate for expend-
27 iture solely for the maintenance and preservation of the cemetery
28 grounds a portion of the net appreciation, in the fair market value of
29 the principal of the trust, as is prudent under the standard established
30 by article five-A of this chapter, the prudent management of institu-
31 tional funds act. In the event that a cemetery corporation seeks to
32 appropriate any percentage of its net appreciation in its permanent
33 maintenance fund in accordance with this subparagraph, the cemetery
34 corporation shall provide notice of such proposed appropriation by
35 certified mail to the cemetery board not less than sixty days in advance
36 of such proposed appropriation and shall disclose such appropriation as
37 part of and in addition to their annual reporting requirements as
38 defined in section fifteen hundred eight of this article, setting forth
39 the amount of funds to be appropriated for such expenditure and its
40 effect on the permanent maintenance fund. Such proposed appropriation
41 shall become effective sixty days after receipt of such notice, unless
42 the cemetery board within such sixty-day period notifies the cemetery
43 corporation that the board objects to the proposed appropriation.
44 Notwithstanding the foregoing provisions of this subparagraph, all prin-
45 cipal of the permanent maintenance fund shall remain inviolate, except
46 that, upon application to the supreme court in a district where a
47 portion of the cemetery grounds is located, the court may make an order
48 permitting the principal or a part thereof to be used for the purpose of
49 current maintenance and preservation of the cemetery or otherwise. Such
50 application may be made by the cemetery board on notice to the corpo-
51 ration or by the corporation on notice to the cemetery board. Unless the
52 cemetery can clearly demonstrate that it lacks sufficient future revenue
53 to make repayment, any such allowance from the permanent maintenance
54 fund shall be in the form of a loan, and the court shall determine the
55 method for repayment of such a loan by the cemetery to the fund. If the
56 cemetery clearly demonstrates it lacks sufficient future revenue to make

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

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

20 (3) The moneys of the fund shall be expended equally for the mainte-
21 nance of abandoned cemeteries previously owned by a corporation incorpo-
22 rated pursuant to this chapter or the membership corporations law and
23 the repair of cemetery vandalism damage and the repair or removal of
24 monuments or other markers not owned by the cemetery corporation,
25 provided, however, that the cemetery board may determine that circum-
26 stances necessitate an unequal distribution due to specific needs and
27 may provide for such distribution. For purposes of this section, the
28 maintenance of abandoned cemeteries may include the ordinary and neces-
29 sary care of a cemetery, such as the construction of cemetery fences,
30 placement of cemetery lights, removal of grass and weeds, demolition or
31 restoration of any buildings or structures in disrepair, the refilling
32 of graves, the repair or removal of monuments or other markers not owned
33 by the cemetery corporation that have fallen into disrepair or dilapida-
34 tion so as to create a dangerous condition, [~~and~~] replacement of ceme-
35 tery doors and locks, and the care of crypts, niches, grave sites, monu-
36 ments, and memorials paid for by means of the general fund or special
37 fund or the income applied from the permanent maintenance fund, perpet-
38 ual care fund or monument maintenance fund of the abandoned cemetery.
39 For the purposes of this paragraph, the term "abandoned cemetery" may
40 include cemeteries in imminent danger of abandonment as determined by
41 the New York state cemetery board.

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

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