

ASSEMBLY, No. 5489

STATE OF NEW JERSEY 219th LEGISLATURE

INTRODUCED MARCH 17, 2021

Sponsored by:

Assemblyman ANDREW ZWICKER

District 16 (Hunterdon, Mercer, Middlesex and Somerset)

Assemblyman ROY FREIMAN

District 16 (Hunterdon, Mercer, Middlesex and Somerset)

Co-Sponsored by:

Assemblyman Dancer

SYNOPSIS

Clarifies municipal consent over cemeteries.

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 3/17/2021)

1 AN ACT concerning municipal consent to establish or enlarge a
2 cemetery and amending P.L.2013, c.261.

3
4 **BE IT ENACTED** *by the Senate and General Assembly of the State*
5 *of New Jersey:*

6
7 1. Section 25 of P.L.2003, c.261 (C.45:27-25) is amended to
8 read as follows:

9 25. a. A cemetery shall not be established or enlarged in any
10 municipality without first obtaining the consent of the municipality
11 by resolution. Municipal consent shall not be granted unless the
12 following criteria have been met:

13 (1) The proposed cemetery or proposed enlargement is located
14 in a zoning district where a cemetery is a permitted use.

15 **【b.】** (2) No more than five cemeteries may be established in
16 any one municipality, and not more than 3% of the area of any
17 municipality shall be devoted to cemetery purposes.

18 **【c.】** A cemetery shall not be established or expanded to exceed
19 250 acres at any one location.

20 **【d.】** b. The governing body of a municipality, by resolution,
21 may waive the limitations of subsection **【b. or c.】** a. of this section
22 if it finds that there is a demonstrated public need for additional
23 cemetery lands in the immediate region, and that **【it is in the public**
24 **interest to waive them.】** waiving the limitations of subsection a. of
25 this section would not result in a substantial detriment to the public
26 health, safety, and welfare, based on the developer's presentation of
27 clear and convincing evidence that:

28 (1) an inventory of all available cemetery interment spaces
29 relative to the projected demand for interment spaces in the
30 immediate region over the next 20 years indicates a public need for
31 additional cemetery land within the immediate region; or

32 (2) there is a specific, unique, and acute need for interment
33 spaces within the immediate region that is not being met.

34 As used in this subsection, "immediate region" means: the area
35 within the physical boundaries of the county within which the
36 municipality is located; and the area within the physical boundaries
37 of each municipality that is contiguous to the municipality but
38 located within another county.

39 **【e.】** c. A cemetery company shall not dedicate additional
40 land to cemetery purposes without board approval.
41 (cf: P.L.2003, c.261, s.25)

42
43 2. This act shall take effect immediately and shall be
44 retroactive so to apply to any application for establishment or
45 enlargement of a cemetery unless a construction permit was issued

EXPLANATION – Matter enclosed in bold-faced brackets **【thus】** in the above bill is
not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

1 for the project pursuant to section 13 of P.L.1975, c.217 (C.52:27D-
2 131) prior to January 1, 2021.

3
4
5 STATEMENT

6
7 This bill would clarify the scope of municipal authority to
8 consent to the establishment or enlargement of a cemetery. A
9 recent court decision held that N.J.S.A.45:27-25 is
10 unconstitutionally vague. This bill addresses the court's perceived
11 unconstitutionality of N.J.S.A.45:27-25 by clarifying the bounds of
12 a municipality's discretion to consent to establish or enlarge a
13 cemetery.

14 By enacting the "New Jersey Cemetery Act, 2003," P.L.2003,
15 c.261 (C.45:27-1 et seq.), the Legislature intended that a
16 municipality must consent to the proposed establishment or
17 enlargement of a cemetery if the cemetery would satisfy the criteria
18 set forth in N.J.S.A.45:27-25. Recently, N.J.S.A.45:27-25 was
19 interpreted in a manner that did not recognize that a municipality's
20 power to consent to the establishment or enlargement of a cemetery
21 is tied to the criteria set forth in the statute. In order to allow this
22 enactment to remedy the court's misinterpretation of this section of
23 law, the bill would take effect retroactively so to apply to any
24 proposed cemetery that had not been issued a construction permit
25 prior to January 1, 2021.

26 Under the bill, a municipality may not consent to the proposed
27 establishment or enlargement of a cemetery unless:

- 28 • the proposed cemetery or proposed enlargement is located in
29 a zoning district where a cemetery is a permitted use;
30 • no more than five cemeteries have been established in the
31 municipality, and not more than 3 percent of the area of the
32 municipality are devoted to cemetery purposes; and
33 • the cemetery would not be established or expanded to
34 exceed 250 acres at any one location.

35 Additionally, the bill would clarify the waiver provisions
36 contained in current law to allow the governing body of a
37 municipality, by resolution, to waive the statutory limitations of this
38 section if the governing body finds:

- 39 • that there is a demonstrated public need for additional
40 cemetery lands in the immediate region, and
41 • that waiving the statutory limitations would not result in a
42 substantial detriment to the public health, safety, and
43 welfare, based on the developer's presentation of clear and
44 convincing evidence that:
45 ○ an inventory of all available cemetery interment
46 spaces relative to the projected demand for interment
47 spaces in the immediate region over the next 20 years

1 indicates a public need for additional cemetery land
2 within the immediate region; or
3 ○ there is a specific, unique, and acute need for
4 interment spaces within the immediate region that is
5 not being met.

6 The bill defines the term “immediate region” to mean the area
7 within the physical boundaries of the county within which the
8 municipality is located; and the area within the physical boundaries
9 of each municipality that is contiguous to the municipality but
10 located within another county.