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SENATE BILL NO. 73

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee on Finance
on February 4, 2004)

(Patron Prior to Substitute—Senator Howell)

A BILL to amend and reenact §§ 57-7.1 through 57-10, 57-16, 57-17, 57-32, 58.1-811, and 58.1-3606 of the Code of Virginia and to amend the Code of Virginia by adding sections numbered 57-7.01 and 57-7.02, relating to the incorporation of churches; transfers of property to and from incorporated churches; and taxes upon incorporated churches.

Be it enacted by the General Assembly of Virginia:

1. That §§ 57-7.1 through 57-10, 57-16, 57-17, 57-32, 58.1-811, and 58.1-3606 of the Code of Virginia are amended and reenacted, and that the Code of Virginia is amended by adding sections numbered 57-7.01 and 57-7.02 as follows:

§ 57-7.01. Definitions.

As used in this article:

"Incorporated church or religious body" means a church diocese, religious congregation, church, or religious society or branch or division thereof organized as a corporation, including a corporation organized by or for a church diocese, religious congregation, church, or religious society or branch or division thereof whose real and personal property is owned by it and for exclusive occupancy or use by a church diocese, religious congregation, church, or religious society or branch or division thereof for worship, ministry or the residence of its ministers.

§ 57-7.02. Incorporation of churches.

Any church diocese, religious congregation, church, or religious society or branch or division thereof may organize as a corporation, or may cause a corporation to be organized, under the provisions of Article 3 (§ 13.1-618 et seq.) of Chapter 9 or Article 3 (§ 13.1-818 et seq.) of Chapter 10 of Title 13.1. The provisions of Chapter 9 (§ 13.1-601 et seq.) and Chapter 10 (§ 13.1-801 et seq.) of Title 13.1, as the case may be, shall apply to every incorporated church or religious body created under this section, except to the extent they are in conflict or inconsistent with the provisions of this chapter.

An incorporated church or religious body may hold legal title to real or personal property, or both. No appointment of trustees (or the use of trustees) to act on behalf of an incorporated church or religious body shall be required under this article for any legitimate business transaction or act of such incorporated church or religious body, including, but not limited to, the conveyance or other transfer of any real or personal property owned by such incorporated church or religious body.

§ 57-7.1. What transfers for religious purposes valid.

Every conveyance or transfer of real or personal property, whether inter vivos or by will, which is made to or for the benefit of any church, church diocese, incorporated church or religious body, religious congregation or religious society, whether by purchase or gift, shall be valid, subject to the provisions of § 57-12.

Any such conveyance or transfer that fails to state a specific purpose shall be used for the religious and benevolent purposes of the church, church diocese, incorporated church or religious body, religious congregation or religious society as determined appropriate by the authorities which, under its rules or usages, have charge of the administration of the temporalities thereof.

No such conveyance or transfer shall fail or be declared void for insufficient designation of the beneficiaries in any case where (i) the church, church diocese, religious congregation or religious society has lawful trustees in existence, is capable of securing the appointment of lawful trustees upon application as prescribed in § 57-8, or has ecclesiastical officers pursuant to the provisions of § 57-16 or (ii) the conveyance or transfer is to an incorporated church or religious body.

§ 57-8. Appointment of trustees to effect the purposes of conveyances, etc.; validation of certain appointments; transfer of legal title to incorporated churches or religious bodies.

A. The circuit court of the county or the circuit or corporation court of the city, or the judge thereof in vacation, wherein there is any parcel of such land or the greater part thereof may, on the application of the proper authorities of such church diocese, religious congregation, church, or religious society or branch or division thereof, from time to time appoint trustees, either where there were, or are, none or in place of former trustees, and on such application and without notice to the trustee or trustees change those so appointed whenever it may seem to the court or judge proper to effect and promote the purpose and object of the conveyance, devise, or dedication, and the legal title to such land shall for that purpose and object be vested in the trustees for the time being and their successors.

B. Trustees of a church diocese, religious congregation, church, or religious society or branch or division thereof shall hereby be permitted to transfer legal title to any real or personal property to an

60 *incorporated church or religious body organized by or for such church diocese, religious congregation,*
61 *church, or religious society or branch or division thereof organized as an incorporated church or*
62 *religious body without the filing of an application or petition or other action with any court or judge,*
63 *but (i) only upon the discretion of the proper authorities of such church diocese, religious congregation,*
64 *church, or religious society or branch or division thereof, and (ii) if such church diocese, religious*
65 *congregation, church, or religious society or branch or division thereof is a member of a denomination,*
66 *in accordance with the constitution, rules or laws of such denomination.*

67 C. All such changes and appointments heretofore [before March 31, 1966] made are hereby
68 validated, ratified, approved and confirmed.

69 § 57-9. How property rights determined on division of church or society.

70 If a division has heretofore occurred or shall hereafter occur in a church or religious society, to
71 which any such congregation is attached, the communicants, pewholders, and pewowners of such
72 congregation, over ~~eighteen~~ 18 years of age, may, by a vote of a majority of the whole number,
73 determine to which branch of the church or society such congregation shall thereafter belong. Such
74 determination shall be reported to the circuit court of the county, or circuit or corporation court of the
75 city, wherein the property held in trust *or held by an incorporated church or religious body* for such
76 congregation or the greater part thereof is; and if the determination be approved by the court, it shall be
77 so entered in its chancery order book, and shall be conclusive as to the title to and control of any
78 property held in trust *or held by an incorporated church or religious body* for such congregation, and be
79 respected and enforced accordingly in all of the courts of this Commonwealth. If a division has
80 heretofore occurred or shall hereafter occur in a congregation, which in its organization and government
81 is a church or society entirely independent of any other church or general society, a majority of the
82 members of such congregation, entitled to vote by its constitution as existing at the time of the division,
83 or where it has no written constitution, entitled to vote by its ordinary practice of custom, may decide
84 the right, title and control of all property held in trust *or held by an incorporated church or religious*
85 *body* for such congregation. Their decision shall be reported to such court, and if approved by it, shall
86 be so entered as aforesaid, and shall be final as to such right of property so held.

87 § 57-10. How trustees to hold books and furniture.

88 When books or furniture shall be given or acquired for the benefit of such church diocese, religious
89 congregation, church, or religious society, or branch or division thereof, to be used on such land in the
90 ceremonies of public worship or at the residence of such bishop, or minister or clergyman, the same
91 shall stand vested in the ~~trustees having the legal title to the land, to be held by them as the land is~~
92 ~~held, and upon the same trusts~~ (i) *the trustees of such church diocese, religious congregation, church, or*
93 *religious society, or branch or division thereof or (ii) an incorporated church or religious body. If such*
94 *trustee has (a) legal title to the land upon which such books or furniture are to be used in the*
95 *ceremonies of public worship or at the residence of such bishop, or minister or clergyman and (b) legal*
96 *title to such books or furniture, then such books or furniture shall stand vested in such trustee to be*
97 *held by him as the land is held, and upon the same trusts.*

98 § 57-16. Property held, etc., by ecclesiastical officers.

99 (1) How property acquired, held, transferred, etc. - Whenever the laws, rules or ecclesiastic polity of
100 any church or religious sect, society or denomination commits to its duly elected or appointed bishop,
101 minister or other ecclesiastical officer, authority to administer its affairs, such duly elected or appointed
102 bishop, minister or other ecclesiastical officer shall have power to acquire by deed, devise, gift, purchase
103 or otherwise, any real or personal property, for any purpose authorized and permitted by its laws, rules
104 or ecclesiastic polity, and not prohibited by the laws of Virginia, and the power to hold, improve,
105 mortgage, sell and convey the same in accordance with such laws, rules and ecclesiastic polity, and in
106 accordance with the laws of Virginia.

107 (2) Transfer, removal, resignation or death of ecclesiastical officer. - In the event of the transfer,
108 removal, resignation or death of any such bishop, minister, or other ecclesiastical officer, the title and all
109 rights with respect to any such property shall pass to and become vested in his duly elected or appointed
110 successor immediately upon election or appointment, and pending election or appointment of such
111 successor, such title and rights shall be vested in such person or persons as shall be designated by the
112 laws, rules, or ecclesiastical polity of such church or religious sect, society or denomination.

113 (3) Validation of deeds, etc. - All deeds, deeds of trust, mortgages, wills or other instruments made
114 prior to March 18, 1942, to or by a duly elected or appointed bishop, minister or other ecclesiastical
115 officer, who at the time of the making of any such deed, deed of trust, mortgage, will or other
116 instrument, or thereafter, had authority to administer the affairs of any church or religious sect, society
117 or denomination under its laws, rules or ecclesiastic polity, transferring property, real or personal, of any
118 such church or religious sect, society or denomination, are hereby ratified and declared valid. All
119 transfers of title and rights with respect to property, prior to such date from a predecessor bishop,
120 minister or other ecclesiastical officer who has resigned or died, or has been transferred or removed, to
121 his duly elected or appointed successor, by the laws, rules or ecclesiastic polity of any such church or

religious sect, society or denomination, either by written instruments or solely by virtue of the election or appointment of such successor, are also hereby ratified and declared valid.

(4) Insufficient designation of beneficiaries or objects of trust. - No gift, grant, bequest or devise made on or after March 18, 1942, to any such church or religious sect, *incorporated church or religious body*, society or denomination or the duly elected or appointed bishop, minister or other ecclesiastical officer authorized to administer its affairs, shall fail or be declared void for insufficient designation of the beneficiaries in, or the objects of, any trust annexed to such gift, grant, bequest or devise; but such gift, grant, bequest or devise shall be valid; provided, that whenever the objects of any such trust shall be undefined, or so uncertain as not to admit of specific enforcement by the chancery courts of the Commonwealth, such gift, grant, bequest or devise shall be held, managed, and the principal or income appropriated, for the religious and benevolent uses of such church or religious sect, *incorporated church or religious body*, society or denomination by its duly elected or appointed bishop, minister or other ecclesiastical officer, or *corporate officer* authorized to administer its affairs.

(5) ~~Limitation on amount of land to be held.~~ - This section shall not be construed, however, so as to authorize any parish or congregation of such church to hold more land, money, securities or other personal estate than authorized under the provisions of § 57-12, as amended from time to time.

(65) Rights and remedies cumulative. - The rights created and the remedies provided in this section shall be construed as cumulative and not exclusive.

(76) No implied repeal of other provisions. - This section shall not be so construed as to effect an implied repeal of any other provisions of this chapter.

§ 57-17. Conveyance of church land held in adverse possession.

Whenever any church or *incorporated church or religious body* in this Commonwealth has been in the undisputed possession, for a period of ~~twenty-five~~ 25 years or more, of any real estate, and for which there is no deed of record, the trustees of the church or *corporate officers of the incorporated church or religious body*, after giving notice once a week for four successive weeks in some newspaper published in, or having general circulation in, the county or city in which such real estate is, may file a petition in the circuit court of such county, or any court of record of such city, duly sworn to, which petition shall set forth the fact that the real estate mentioned therein has been in the undisputed possession of such church or *incorporated church or religious body* for a period of ~~twenty-five~~ 25 years or more and shall give the true boundaries of such real estate. Upon the hearing of such petition, if the court shall be satisfied that the real estate mentioned has been in the undisputed possession of such church or *incorporated church or religious body* for a period of ~~twenty-five~~ 25 years or more; that the boundaries mentioned in the petition are the true boundaries of such real estate; that the trustees or *corporate officers* who file such petition are the duly appointed trustees of such church or *officers of the incorporated church or religious body*, it may appoint a special commissioner to make conveyance of such real estate to the trustees of the church or to the *incorporated church or religious body*, with covenant of special warranty; ~~provided that such real estate so acquired shall not increase the holdings of such trustees in the aggregate at any one time to more than four acres of land in a city or town, nor more than seventy-five acres out of a city or town.~~

§ 57-32. Who may hold such property.

Any cemetery company chartered under the laws of this Commonwealth, or the trustees of a church or an *incorporated church or religious body as defined in Article 2 (§ 57-7.01 et seq.) of Chapter 2 of this title*, or any trustees holding title to a cemetery, or burial ground, may take and hold any property granted, ~~bequeath~~ *bequeathed*, devised, or given upon trust to apply its income to the improvement, repair, or embellishment of the cemetery, or any burial lot or monument or tomb or vault or other erections in such cemetery, according to the terms of such grant, bequest, devise, or gift.

§ 58.1-811. Exemptions.

A. The taxes imposed by § 58.1-801 shall not apply to any deed conveying real estate:

1. To an incorporated college or other incorporated institution of learning not conducted for profit, where such real estate is intended to be used for educational purposes and not as a source of revenue or profit;

2. To an *incorporated church or religious body as defined in Article 2 (§ 57-7.01 et seq.) of Chapter 2 of Title 57 or to the trustee or trustees of any church or religious body*, where such real estate is intended to be used exclusively for religious purposes, or for the residence of the minister of any such church or religious body;

3. To the United States, the Commonwealth, or to any county, city, town, district or other political subdivision of the Commonwealth;

4. To the Virginia Division of the United Daughters of the Confederacy;

5. To any nonstock corporation organized exclusively for the purpose of owning and/or operating a hospital or hospitals not for pecuniary profit;

6. To a corporation upon its organization by persons in control of the corporation in a transaction

183 which qualifies for nonrecognition of gain or loss pursuant to § 351 of the Internal Revenue Code as it
184 exists at the time of the conveyance;

185 7. From a corporation to its stockholders upon complete or partial liquidation of the corporation in a
186 transaction which qualifies for income tax treatment pursuant to §§ 331, 332, 333 or § 337 of the
187 Internal Revenue Code as it exists at the time of liquidation;

188 8. To the surviving or new corporation, partnership or limited liability company upon merger or
189 consolidation of two or more corporations, partnerships or limited liability companies, or in a
190 reorganization within the meaning of § 368 (a) (1) (C) and (F) of the Internal Revenue Code as
191 amended;

192 9. To a subsidiary corporation from its parent corporation, or from a subsidiary corporation to a
193 parent corporation, if the transaction qualifies for nonrecognition of gain or loss under the Internal
194 Revenue Code as amended;

195 10. To a partnership or limited liability company, when the grantors are entitled to receive not less
196 than ~~fifty~~ 50 percent of the profits and surplus of such partnership or limited liability company;

197 11. From a partnership or limited liability company, when the grantees are entitled to receive not less
198 than ~~fifty~~ 50 percent of the profits and surplus of such partnership or limited liability company;

199 12. To trustees of a revocable inter vivos trust, when the grantors in the deed and the beneficiaries of
200 the trust are the same persons, regardless of whether other beneficiaries may also be named in the trust
201 instrument, when no consideration has passed between the grantor and the beneficiaries; and to the
202 original beneficiaries of a trust from the trustees holding title under a deed in trust;

203 13. When the grantor is the personal representative of a decedent's estate or trustee under a will or
204 inter vivos trust of which the decedent was the settlor, other than a security trust defined in § 55-58.1,
205 and the sole purpose of such transfer is to comply with a devise or bequest in the decedent's will or to
206 transfer title to one or more beneficiaries after the death of the settlor in accordance with a dispositive
207 provision in the trust instrument; or

208 14. When the grantor is an organization exempt from taxation under § 501 (c) (3) of the Internal
209 Revenue Code that is organized and operated primarily to acquire land and purchase materials to erect
210 or rehabilitate low-cost homes on such land, which homes are sold at cost to persons who otherwise
211 would be unable to afford to buy a home through conventional means, located in a county with a
212 population of not less than 28,500 and not more than 28,650 or a city with a population of not less than
213 66,000 and not more than 70,000.

214 B. The taxes imposed by §§ 58.1-803 and 58.1-804 shall not apply to any deed of trust or mortgage:

215 1. Given by an incorporated college or other incorporated institution of learning not conducted for
216 profit;

217 2. Given by the trustee or trustees of a church or religious body *or given by an incorporated church*
218 *or religious body as defined in Article 2 (§ 57-7.01 et seq.) of Chapter 2 of Title 57;*

219 3. Given by any nonstock corporation organized exclusively for the purpose of owning and/or
220 operating a hospital or hospitals not for pecuniary profit;

221 4. Given by any local governmental entity or political subdivision of the Commonwealth to secure a
222 debt payable to any other local governmental entity or political subdivision; or

223 5. Securing a loan made by an organization described in subdivision 14 of subsection A of this
224 section.

225 C. The tax imposed by § 58.1-802 shall not apply to any transaction described in subdivisions 6
226 through 13 of subsection A of this section, nor to any:

227 1. Instrument or writing given to secure a debt;

228 2. Deed conveying real estate from an incorporated college or other incorporated institution of
229 learning not conducted for profit;

230 3. Deed conveying real estate from the Commonwealth or any county, city, town, district or other
231 political subdivision thereof;

232 4. Conveyance of real estate to the Commonwealth or any county, city, town, district or other
233 political subdivision thereof, if such political unit is required by law to reimburse the parties taxable
234 pursuant to § 58.1-802; or

235 5. Deed conveying real estate from ~~any~~ *the trustee or trustees of a church or religious body or from*
236 *an incorporated church or religious body as defined in Article 2 (§ 57-7.01 et seq.) of Chapter 2 of*
237 *Title 57.*

238 D. No recordation tax shall be required for the recordation of any deed of gift between a grantor or
239 grantors and a grantee or grantees when no consideration has passed between the parties. Such deed
240 shall state therein that it is a deed of gift.

241 E. The tax imposed by § 58.1-807 shall not apply to any lease to the United States, the
242 Commonwealth, or any county, city, town, district or other political subdivision of the Commonwealth.

243 F. The taxes imposed by §§ 58.1-801, 58.1-802, 58.1-807, 58.1-808 and 58.1-814 shall not apply to
244 (i) any deed of gift conveying real estate or any interest therein to The Nature Conservancy or (ii) any

lease of real property or any interest therein to The Nature Conservancy, where such deed of gift or lease of real estate is intended to be used exclusively for the purpose of preserving wilderness, natural or open space areas.

G. The words "trustee" or "trustees," as used in subdivision 2 of subsection A and subdivision 2 of subsection B, mean the trustees mentioned in § 57-8 and the ecclesiastical officers mentioned in § 57-16.

H. No recordation tax levied pursuant to this chapter shall be levied on the release of a contractual right, if the release is contained within a single deed that performs more than one function, and at least one of the other functions performed by the deed is subject to the recordation tax.

§ 58.1-3606. Property exempt from taxation by classification.

A. Pursuant to the authority granted in Article X, Section 6 (a) (6) of the Constitution of Virginia to exempt property from taxation by classification, the following classes of real and personal property shall be exempt from taxation:

1. Property owned directly or indirectly by the Commonwealth, or any political subdivision thereof.

2. Buildings with land they actually occupy, and the furniture and furnishings therein owned by churches or religious bodies, *including an incorporated church or religious body as defined in Article 2 (§ 57-7.01 et seq.) of Chapter 2 of Title 57*, and exclusively occupied or used for religious worship or for the residence of the minister of any church or religious body, and such additional adjacent land reasonably necessary for the convenient use of any such building.

3. Nonprofit private or public burying grounds or cemeteries.

4. Property owned by public libraries, law libraries of local bar associations when the same are used or available for use by a state court or courts or the judge or judges thereof, medical libraries of local medical associations when the same are used or available for use by state health officials, incorporated colleges or other institutions of learning not conducted for profit. This paragraph shall apply only to property primarily used for literary, scientific or educational purposes or purposes incidental thereto and shall not apply to industrial schools which sell their products to other than their own employees or students.

5. Property belonging to and actually and exclusively occupied and used by the Young Men's Christian Associations and similar religious associations, including religious mission boards and associations, orphan or other asylums, reformatories, hospitals and nunneries, conducted not for profit but exclusively as charities (which shall include hospitals operated by nonstock corporations not organized or conducted for profit but which may charge persons able to pay in whole or in part for their care and treatment).

6. Parks or playgrounds held by trustees for the perpetual use of the general public.

7. Buildings with the land they actually occupy, and the furniture and furnishings therein belonging to any benevolent or charitable organization and used by it exclusively for lodge purposes or meeting rooms, together with such additional adjacent land as may be necessary for the convenient use of the buildings for such purposes.

8. Property of any nonprofit corporation organized to establish and maintain a museum.

B. Property, belonging in one of the classes listed in subsection A of this section, which was exempt from taxation on July 1, 1971, shall continue to be exempt from taxation under the rules of statutory construction applicable to exempt property prior to such date.

2. That an emergency exists and this act is in force from its passage and (i) any state or local taxes assessed pursuant to Chapter 8 (§ 58.1-800 et seq.) of Title 58.1 of the Code of Virginia and (ii) any local recordation taxes assessed pursuant to Article 1 (§ 58.1-3800 et seq.) of Chapter 38 of Title 58.1 on or after January 1, 2004, through the date of the passage of this act upon any deed conveying real estate to an incorporated church or religious body, deed of trust or mortgage given by an incorporated church or religious body, or deed conveying real estate from an incorporated church or religious body shall be refunded, if paid, with the amount of interest being determined under existing law.

In addition, any local property taxes assessed on or after January 1, 2004, through the date of the passage of this act upon an incorporated church or religious body for any property described and occupied or used as provided under § 58.1-3606 shall be refunded, if paid, with the amount of interest being determined under existing law.