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SENATE JOINT RESOLUTION NO. 89

Offered January 14, 2004

Establishing a joint subcommittee to study the issues attendant to the incorporation of churches in Virginia. Report.

Patron—Mims

Referred to Committee on Rules

WHEREAS, churches in Virginia are allowed to hold title to real property subject to many statutory restrictions rooted in our founding fathers not wanting churches to become too powerful; and

WHEREAS, Virginia law currently restricts churches located within a city or town to owning no more than 15 acres, and in counties, to no more than 250 acres; and

WHEREAS, Virginia law requires that church property be held in the name of certain trustees who are appointed by the local circuit court; and

WHEREAS, Virginia law was challenged in the United States District Court for the Western District of Virginia on the basis of the Virginia constitutional provision under which the State Corporation Commission denied a church's incorporation request; and

WHEREAS, the federal judge in that case held that the portion of the Constitution of Virginia prohibiting the state from granting a charter of incorporation to any church or religious denomination violated the First Amendment right to the free exercise of religion; and

WHEREAS, Virginia is one of the two states in the nation that prohibit the incorporation of churches; now, therefore, be it

RESOLVED by the Senate, the House of Delegates concurring, That a joint subcommittee be established to study the issues attendant to the incorporation of churches in Virginia. The joint subcommittee shall consist of 10 members that include six legislative members, three nonlegislative citizen members, and the Attorney General or his designee. Members shall be appointed as follows: two members of the Senate to be appointed by the Senate Committee on Privileges and Elections; four members of the House of Delegates to be appointed by the Speaker of the House of Delegates in accordance with the principles of proportional representation contained in the Rules of the House of Delegates; two nonlegislative citizen members, one of whom shall be a member of the Real Estate Section of the Virginia State Bar and one of whom shall be a representative of the Virginia Land Title Association, to be appointed by the Senate Committee on Privileges and Elections; one nonlegislative citizen member who regularly represents churches in real estate transactions to be appointed by the Speaker of the House of Delegates; and the Attorney General or his designee to serve ex officio with voting privileges. Nonlegislative citizen members shall be citizens of the Commonwealth of Virginia. The joint subcommittee shall elect a chairman and vice chairman from among its membership, who shall be members of the General Assembly.

In conducting its study, the joint subcommittee shall examine, among other issues it deems appropriate, (i) whether churches properly can incorporate in those portions of the state not covered by the United States District Court for the Western District of Virginia's ruling; (ii) how unincorporated churches should transition from "trustee" ownership to "corporate" ownership of real property; and (iii) whether statutory restrictions on the amount of real property a church may hold apply to incorporated churches.

Administrative staff support shall be provided by the Office of the Clerk of the Senate. Legal, research, policy analysis, and other services as requested by the joint subcommittee shall be provided by the Division of Legislative Services. All agencies of the Commonwealth shall provide assistance to the joint subcommittee for this study, upon request.

The joint subcommittee shall be limited to four meetings for the 2004 interim, and the direct costs of this study shall not exceed \$4,800 without approval as set out in this resolution. Approval for unbudgeted nonmember-related expenses shall require the written authorization of the chairman of the joint subcommittee and the respective Clerk. If a companion joint resolution of the other chamber is agreed to, written authorization of both Clerks shall be required.

No recommendation of the joint subcommittee shall be adopted if a majority of the Senate members or a majority of the House members appointed to the joint subcommittee (i) vote against the recommendation and (ii) vote for the recommendation to fail notwithstanding the majority vote of the joint subcommittee.

The joint subcommittee shall complete its meetings by November 30, 2004, and the chairman shall submit to the Division of Legislative Automated Systems an executive summary of its findings and

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S189

59 recommendations no later than the first day of the 2005 Regular Session of the General Assembly. The
60 executive summary shall state whether the joint subcommittee intends to submit to the General
61 Assembly and the Governor a report of its findings and recommendations (for publication as a
62 document). The executive summary and report shall be submitted as provided in the procedures of the
63 Division of Legislative Automated Systems for the processing of legislative documents and reports and
64 shall be posted on the General Assembly's website.

65 Implementation of this resolution is subject to subsequent approval and certification by the Joint
66 Rules Committee. The Committee may approve or disapprove expenditures for this study, extend or
67 delay the period for the conduct of the study, or authorize additional meetings during the 2004 interim.