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SENATE BILL NO. 1305

Senate Amendments in [] — February 3, 2005

A BILL to amend and reenact §§ 57-9 and 57-15 of the Code of Virginia, relating to property held for religious purposes; determination of property rights upon division of church, diocese, or society.

Patrons Prior to Engrossment—Senators Mims, Martin, O'Brien and Ruff

Referred to Committee on General Laws

Be it enacted by the General Assembly of Virginia:

1. That §§ 57-9 and 57-15 of the Code of Virginia are amended and reenacted as follows:

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

A. If a division has ~~heretofore~~ occurred or shall ~~hereafter~~ occur in a church, *diocese*, or religious society, to which ~~any such~~ a congregation is attached, the *members or communicants, pewholders, and pewowners* of such congregation, over ~~eighteen~~ 18 years of age, may, by a vote of a majority of the whole number, determine (i) to which branch of the church or society such congregation shall thereafter belong; (ii) *to belong to a different church, diocese, or society; or (iii) to be independent of any church, diocese, or society.*

B. A division shall be conclusively presumed when the lesser of 10 congregations or 10 percent of all congregations in the Commonwealth that are attached to a church, diocese, or society vote within any 12-month period, by a majority of the members or communicants of such congregation that are over 18 years of age, to separate from the church, diocese, or society. The vote to separate may be combined with the vote to determine the congregation's future allegiance as provided in subsection A.

C. Such determination shall be reported by the congregation to the circuit court of the county, ~~or circuit or corporation court of the city~~, wherein the property held in trust for such congregation or the greater part thereof is; and if the determination be approved by the court, it shall be so entered in its chancery order book, and shall be conclusive as to the title to and control of ~~any such~~ property held in trust for such congregation, and be respected and enforced accordingly in all of the courts of this Commonwealth, unless the deed or deeds to such property explicitly vests title in [, or an express trust agreement grants the beneficial interest to,] the church, diocese, or society, or a bishop or other representative thereof, rather than the congregation.

D. If a division has heretofore occurred or shall hereafter occur in a congregation, which in its organization and government is a church or society entirely independent of any other church or general society, a majority of the members of such congregation, entitled to vote by its constitution as existing at the time of the division, or where it has no written constitution, entitled to vote by its ordinary practice of custom, may decide the right, title and control of all property held in trust for such congregation. Their decision shall be reported to such court, and if approved by it, shall be so entered as aforesaid, and shall be final as to such right of property so held.

§ 57-15. Proceedings by trustees or members for similar purposes.

The trustees of such church diocese, congregation, or church or religious denomination, or society or branch or division thereof, in whom is vested the legal title to such land held for any of the purposes mentioned in § 57-7.1, may file their petition in the circuit court of the county or the city wherein the land, or the greater part thereof held by them as trustees, lies, or before the judge of such court in vacation, asking leave to sell, encumber, extend encumbrances, improve, make a gift of, or exchange the land, or a part thereof, or to settle boundaries between adjoining property by agreement. Upon evidence being produced before the court that it is the wish of the congregation, or church or religious denomination or society, or branch or division thereof, or the constituted authorities thereof having jurisdiction in the premises, or of the governing body of any church diocese, to sell, exchange, encumber, extend encumbrances, make a gift of, or improve the property or settle boundaries by agreement, the court shall make such order as may be proper, providing for the sale of such land, or a part thereof, or that the same may be exchanged, encumbered, improved, or given as a gift, or that encumbrances thereon be extended, and in case of sale for the proper investment of the proceeds or for the settlement of such boundaries by agreement. *When title to such land, as evidenced by the deed or deeds, indicates that the property is held for the use of the congregation, evidence of the wish of such congregation shall be sufficient proof for granting the transfer.*

When any such religious congregation has become extinct or has ceased to occupy such property as a place of worship, so that it may be regarded as abandoned property, the petition may be filed either by the surviving trustee or trustees, should there be any, or by any one or more members of such congregation, should there be any, or by the religious body which by the laws of the church or

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59 denomination to which the congregation belongs has the charge or custody of the property, or in which
60 it may be vested by the laws of such church or denomination. The court shall either (i) make a decree
61 for the sale of the property or the settlement of boundaries between adjoining properties by agreement,
62 and the disposition of the proceeds in accordance with the laws of the denomination and the printed acts
63 of the church or denomination issued by its authority, embodied in book or pamphlet form, shall be
64 taken and regarded as the law and acts of such denomination or religious body or (ii) at the request of
65 the surviving trustees and after notice in accordance with law to all necessary parties, make such order
66 as may be proper providing for the gift of such property to any willing local, state or federal entity or to
67 a willing private, nonprofit organization exempt from taxation under § 501 (c) (3) of the Internal
68 Revenue Code, provided the court finds that (a) the property includes a historic building or landmark so
69 designated by the Commonwealth and (b) the purpose of such gift is historical preservation of the
70 property.

71 The court may make such order as to the costs in all these proceedings as may seem proper.